THE QUESTION CONCERNING IMPOSITIONS, Tonnage, Poundage, Prizage, Customs, &c.

Fully stated and argued, from Reason, Law, and Policy.

DEDICATED To King *JAMES* in the latter end of his Reign.

BY

Sir JOHN DAVIES, His then Majesties Attourney Generall.

LONDON,

Printed by *S. G.* for *Henry Twyford*, in *Vine*-Court *Middle-Temple*, and *Rich: Marriot*, under the Dyall in Saint *Dunstans* Church-yard, *London*. 1656.

OBSERVATIONS

BY

Sir JOHN DAVIE, Baronet.

TO THE

KINGS

Most Excellent

MAJESTIE.

THis *Question*, *SIR*, Concerning your Majesties Prerogative in laying Impositions upō Merchandizes, ought not to have been made or moved at all; howbeit, it hath been stirred and debated

As

bated in Parliament, it is now become an Argument of ſuch Dignity and Importance, as the beſt-able amongſt your Servants learned in the Law, may well imploy their beſt learning in the diſcuſſing thereof. For my part, though I find my ſelf unable to handle this Noble Queſtion, as the weight and worthineſſe requireth; yet have I upon ſundry occaſions ariſing from the courſe of my ſervice, collected ſuch notes, and drawn together ſuch materials, as may be of uſe in the building of a Fortreſſe in the defence of this Prerogative; and ſure I am, that if your Majeſtie will vouchſafe to caſt your eye upon theſe Collections, that your Judgment will make a far better uſe and application thereof, than

I who have gathered the same, can posible do; these little sparks of knowledge being taken into your Majesties consideration, wil instantly multiply and arise into a flame, and so give a great light for clearing of this Question: This learning within my hand, is but a Spade, in your Majesties hand will become a Scepter. I have onely like the poor *Indian*, digged up the Oare of Mine, which being brought into the Kings Mint, and refined there, becomes part of the royall Treasure. For the Argument it self, it will hardly receive any Ornament,

Ornari res ipsa negat, contenta doceri.

The best light I can give it, is

Lucidus ordo, by breaking it into *Capita rerum*, and casting it into a plain and naturall method; it is somewhat long, and in *Multiloquio non deest peccatum*, saith *Solomon*; it is also mixt with some reasons of State, wherein a common Lawyer may easily make a *Solecisme*; yet such as it is, my zeal to advance your Majesties Service, hath moved me to present it to your Majesty, with all humblenesse, and with some hope, that this dutifull paine shall purchase a pardon for the errours therein committed,

By your Majesties unprofitable Servant, and humble Subject,

John Davies.

THE CONTENTS Of this BOOK.

CHAP. I.

THe *Expoſition and meaning of certain words, which do ſhew the true ſtate of the* Queſtion. page 1

CHAP. II.

Of the general Law of Nations, or Jus Gentium, *and the force thereof in all Kingdoms, that traffique and commerce is a principal ſubject of that Law, and that it giveth power unto all Kings to take Cu-*

ſtomes and Impoſitions upon Merchandizes, and that the Crown of England *hath many Prerogatives annexed to it by the Law of Nations, of which our Common Law taketh notice, and doth admit and approve the ſame.* 4

CHAP. III.

Of the Law Merchant, which is a branch of the Law of Nations, and how it differs from our Common Law; and how in the judgement of our Law, Merchandizes do differ from other Goods & Chattels which do not croſſe the Seas; and how the Common Law and Statute Law of England *do admit and allow of the Law Merchant.* 10

CHAP. IV.

Of the Imperial or Civil Law, and of the extent of the Juriſdiction thereof; of what force it is at this day within the Monarchies of Europe, *and in what caſe it is received within the King of* Englands *Dominions, and how it warranteth all Kings and Abſolute Princes to lay Impoſitions upon Merchandizes.* 20

Of

CHAP. V.

Of the Canon or Eccleſiaſtical Law, and how far forth it doth examine and reſolve this Queſtion in caſes of Conſcience only. 25

CHAP. VI.

That this Queſtion of Impoſition may be examined and decided as well by the rules of the Laws before mentioned, as by the rules of our Municipiall Laws or Common Law of England. 27

CHAP. VII.

Of the Kings Prerogatives in general, and that the ſame do conſiſt in certain ſpeciall points or caſes reſerved to the abſolute power of the Crown; when the Poſitive Law was firſt eſtabliſhed, and that the Cõmon Law of England *doth acknowledge and ſubmit it ſelf to thoſe Prerogatives.* 29

CHAP. VIII.

Of the Kings Prerogative in the ordering and governing of all Trade and Traffique in Corporations, Markets, and Fairs within the Land, and the Common Law doth ac-

acknowledge this Prerogative, and submit it self thereunto. 34

CHAP. IX.

That the King hath another Prerogative in the Government in the Trade of Merchandizes crossing the Seas, differing from the Prerogative which he useth and ordereth in Trade and Traffique in Markets and Fairs within the Land, and of the difference between Custome and Toll by the rules of the Common Law. 38

CHAP. X.

Of the ancient duty called Custome, payable for our principall Commodities exported, and that it was originally an Imposition. 41

CHAP. XI.

Of the ancient duties called Prizes, taken out of Forein goods imported, except Wines, and the petty-Customes of three pence of the pound were accepted by King Edw. 1. *in lieu of Prizes.* 46

CHAP. XII.

Of the ancient Customes payable for Wines, called Prizage *and* Butlerage. 50

CHAP.

CHAP. XIII.

Of the ancient Officers which our Kings have created by vertue of their Prerogatives, to search and over-see all sorts of Merchandizes, and to collect the duties payable for the same. 52

CHAP. XIV.

Of other Impositions, besides the ancient Customes before mentioned, laid upon Merchandizes, by severall Kings and Queens since the Conquest; some of which Impositions have been discontinued or remitted, and some of them are continued and paid at this day; and first of the Imposition set by King Edw. 1. *over and besides the Customes spoken of before.* 53

CHAP. XV.

Of the Imposition set and taken by King Edward *the second.* 55

CHAP. XVI.

Of the Impositions laid and levied upon Merchandizes, by King Edw. 3. 57

CHAP.

CHAP. XVII.

Of the Profits raised unto the Crown out of Merchandizes during the reigns of several Kings who succeeded K. Edw. 3. *untill the reign of Queen* Mary. 62

CHAP. XVIII.

That Queen Mary *did use her Prerogative in laying Impositions upon Merchandizes.* 70

CHAP. XIX.

That Queen Elizabeth *also used her Prerogative in laying Impositions upon Merchandizes.* 71

CHAP XX.

That our Soveraign Lord King James *hath by virtue of the same Prerogative, without Act of Parliament, layd several Impositions upon Merchandizes.* 73

CHAP. XXI.

The general reasons whereupon this Prerogative is grounded. 76

CHAP.

CHAP. XXII.

Of the ſeveral Objections that are made againſt the Kings Prerogative in laying Impoſitions upon Merchandizes, and the ſeveral Anſwers thereunto. 94

CHAP. XXIII.

The Anſwer to the firſt Objection. 96

CHAP. XXIV.

Of the ſecond Objection touching the uncertainty and unbounded largeneſſe of this Prerogative. 99

CHAP. XXV.

The Anſwer to the ſecond Objection. 101

CHAP. XXVI.

The third Objection, touching the repeal of Charta Mercatoria *by King* Edw. 2. *and the remitall of divers Impoſitions by King* Edw. 3. *upon ſundry Petitions of the Commons in Parliament, and the puniſhment of*

of divers Persons in Parliament for procuring Impositions to be set up. 106

CHAP. XXVII.

The Answer to the third Objection. 110

CHAP. XXVIII.

The fourth Objection, that the Prerogative is bound or taken away by divers Acts of Parliament. 129

CHAP. XXIX.

The Answer to the fourth Objection. 131

CHAP. XXX.

The fifth Objection, that Tonnage and Poundage were never taken, but when the same was granted by Parliament. 140

CHAP. XXXI.

The Answer to the fifth Objection. 141

CHAP.

CHAP. XXXII.

The Conclusion. 146

CHAP. XXXIII.

A Comparison of the Impositions set and taken in England, *by the Kings Prerogative, with the Exceptions and Gabells in Forein States and Kingdoms, whereby it will appear, that the Subjects of the Crown of* England, *do not bear so heavy a burthen by many degrees, as the Subjects of other Nations do bear in this kind.* 147

AN

The Contents.

CHAP. XXXII.

145

CHAP. XXXIII.

142

AN ARGUMENT UPON The Queſtion of *Impoſition*, digeſted and divided into ſundrie Chapters; by one of His Majeſties learned Counſel in *IRELAND*.

CHAP. I.

The Expoſition and meaning of certain words, which do ſhew the true ſtate of the Queſtion.

THe *Queſtion* it ſelf is no more than this, Whether the Impoſitions which the King of *England* hath laid and levied upon Merchandize, by vertue of his Prerogative onely, without

Act of Parliament, be lawful or warranted by the Law of *England*.

By the word Impoſition, we mean only ſuch rates or ſums of money as the King by Letters Patents, under the Great Seal of *England* or *Ireland*, hath ſet upon Merchandizes imported and exported, and commanded the ſame to be paid and levied to His Majeſties uſe, over and above the Cuſtomes and Subſidies formerly due and payable for the ſame Merchandizes.

By the word Merchandizes, we mean only ſuch goods or Merchandizes as are tranſported over the Seas, from one Realm or Dominion unto another, to be ſold or exchanged for reaſonable gain or profit; for upon the ingate or outgate of Commodities ſo croſſing the Seas only; Cuſtomes, Subſidies, and Impoſitions for Merchandizes are paid and taken, and not for any Commodities carried too and fro by Sea and Land, within one and the ſame Realm and Dominion.

By the Law of *England*, we underſtand not only our cuſtomary Common Law, and our Statutes of *England*, which are Native and peculiar to our Nation only, but ſuch other Laws alſo as be common

mon to other Nations as well as us; have been received and uſed time out of mind by the Kings and people of *England* in divers caſes, and by ſuch ancient uſage, are become the Lawes of *England* in ſuch caſes; namely, the generall Law of Nations, and the Law-Merchant which is a branch of the Law, the Imperial or Civil Law, the Common or Eccleſiaſtical Law, every of which Laws ſo far forth as the ſame have been received and uſed in *England*, time out of mind, may properly be ſaid to be the Laws of *England*.

CHAP. II.

Of the general Law of Nations, or Jus Gentium, *and the force thereof in all Kingdoms, that traffique and commerce is a principal ſubject of that Law, and that it giveth power unto all Kings to take Cuſtomes and Impoſitions upon Merchandizes, and that the Crown of* England *hath many Prerogatives annexed to it by the Law of Nations, of which our Common Law taketh notice, and doth admit and approve the ſame.*

JUs Gentium, or the generall Law of Nations is of equal force in all Kingdoms, for all Kingdoms had their beginning by the Law of Nations; therefore it ſtandeth with good reaſon that the Law of Nations ſhould be of force, and of like force in all Kingdoms; and for this cauſe in the Realms ſubject to the Crown of *England*, the Law of Nations alſo is in force in ſuch caſes, eſpecially wherein the King himſelf, or his Subjects, have correſpondence or commerce

merce with other Nations who are not bound in those cases by the Municipall Laws of *England.*

Omnes populi (saith Justinian) *qui legibus & moribus reguntur, partim suo proprio, partim cõmuni omnium hominum jure utuntur: nam quod quisq; populus ipse sibi Jus constituit id ipsius proprium Civitatis est, vocaturque jus Civile; quod vero naturalis ratio inter omnes homines constituit, id apud omnes homines plerumque custoditur, vocaturque Jus gentium, quasi quo jure omnes gentes utuntur;* and in the same place it is said, *Jus Gentium omni hominum generi cõmune est, & ex hoc Jure Gentium omnes pene contractus introducti sunt, ut emptio, venditio, locatio, conductio, societas, depositum mutuum, &c.* Justinian

And with this agreeth our Doctor and Student, *lib.* 1. *cap.* 2. where it is said, that Trade and Traffique is by the Law of Nations; so that Commerce, Trade, & Traffique for Merchandize, between the people of several Nations and Kingdoms, is a principal subject of the Law of Nations; and therefore to that question that hath been made in *England*, Whether the ancient Customes payable Doct. & Stud. 1. lib. cap. 2.

for Merchandizes, did first grow due by our customary Common Law or Statute Law of *England*? Why may I not answer, that neither the Customary Law, nor the Statute Law of *England*, but the generall Law of Nations did first give these duties unto the Crown of *England*?

For as the Law of Nations was before Kings, for Kings were made by the Law of Nations, *Ex jure Gentium Reges originem traxerunt*, saith *Baldus*; So Kings were no sooner made by the Law of Nations, but presently the same Law, *cum creatus fuerit Rex ei omnia regalia conceduntur, & competit omnibus Regibus jus imponendi quantum habet Regalia*, saith Baldus, *Vectigalia introducta sunt à jure, &c.* which is the Law of Nature or Nations, *Ideo non otiosa sed favoralia*, saith another Doctor, did annex this Prerogative to their several Crowns, *Vectigal origine ipsa jus Cæsarum & Regum partimoniale est*, saith another, *Inhæret Sceptro* saith another; and therefore when our ancient *British* Kings took up Customes for Merchandizes transported into *France*, as *Strabo* writeth, *Britanni vectigalia tollebant gravia earum rerum quas brevi trajectu in Gallia*

Baldus.

Baldus.

Strabo.

liam importabant; ſhall we preſume they did it by Act of Parliament? no, for doubtleſſe they did it by vertue of this Prerogative given unto them by the Law of Nations; for Kings upon their firſt inſtitution did greater things than this, by their Prerogative, without the conſent of the people, *Vetuſtiſſima coronæ jura ex ſingulari Regum decreto primitus orta*, ſaith a learned Doctor; and at firſt ſaith *Juſtinian*, *Arbitria Regum pro legibus fuere*, and ſo ſaith *Halicarnaſſus*, *lib.* 3. *Cicero offic. lib.* 2. And truly as Cuſtomes and Impoſitions taken upon importations of Merchandizes, being moſt properly called *Vectigalia*, *à mercibus evectis & invectis*, are the moſt ancient duties payable to the King; ſo are the ſame grounded, ſaith *Bodin*, upon the greateſt reaſon and equity in the world, *quid eſt enim rationi & æquitati magis conſentaneum quàm & is qui in noſtro territorio & ex noſtris queſtum facit principi noſtro cujus permiſſu & ſub cujus protectione negotiatur aliquod perdat & preſolvat?* And this common reaſon and equity which is the ground of theſe duties payable for Merchandizes, what is it elſe but the Law of Nations? which is nothing elſe but that

Juſtinian

Halicar. lib. 3.

which common reason hath established amongst all men for the common good of all men, and which all Nations have received and imbraced for their mutual benefit and commoditie.

Neither is this the onely Prerogative which the King of *England* hath by the Law of Nations, *habet & Rex in regno suo* (saith Bracton) *alia privilegia de jure Gentium propria, viz. Sorecenum maris thesaurum insentum grossos pisces, & balenas & sturgiones Wavias, &c. huiusmodi de jure Gentium pertinent ad Coronam*, saith Stampford, *Prerogativa Regis, fol.* 37. 6. Adde hereunto the absolute power of the King, to make War and Peace, League and Truces, to grant safe Conducts, to pardon all Offenders, to distribute all degrees of Honour, and the like, wherein the King hath sole and absolute power, *Merum imperium & non mixtum*, and which Prerogative is as antient as the Crown, and incident to the Crown by the Law of Nations.

Bracton.

Stampford prärogat. Regis fol. 37. 6.

Lastly, for the proof that our Common Law doth acknowledge and prove the Law of Nations in most of these cases. The Book 19 *Edw.* 4. 6. doth approve the Kings absolute power in making

19 E. 4. 6.

king War, Peace, and Leagues; and in 37 *Edw.* 6. 20. That part of the Law of Nations, whereby the High Constable and Marshall of *England*, do proceed in their Courts of War, and Chivalrie, is called the Law of the Land. We finde also the Kings sole power in 11 *Hen.* 4. *Rot. Parliament. in Archivis turris London*, for Coyning of Money; we have the case of Mines, *Com.* 316. for safe conduct of Merchants, and stop of Trades, *tempore guerræ*, and Letters of Repriſall we have 7 *Edw.* 4. 19. 2 *R.* 3. 2. *Magna Charta cap.* 30. and the Regiſter wherein we find Writs of Repriſall.

37 E. 6. 20

11 H. 4.

Com. 316

7 E. 4. 19. 3. R. 3. 2. Magna Charta. cap. 30.

CHAP.

CHAP. III.

Of the Law Merchant, which is a branch of the Law of Nations, and how it differs from our Common Law, and how in the judgement of our Law, Merchandizes do differ from other Goods & Chattels which do not crosse the Seas, and how the Common Law and Statute Law of England *do admit and allow of the Law Merchant.*

Vlpian. MErcatura vel Societas Mercatorum est magna Respublica (saith *Vlpian*) and therefore that Common-wealth of Merchants hath alwayes had a peculiar and proper Law to rule and govern it; this Law is called the Law Merchant, wherof the Laws of all Nations do take speciall knowledge; first both the Common Law and Statute Law of *England* do take notice of the Law Merchant, and do leave the causes of Merchants and Merchandizes to be decided by the rules of that Law; for what saith the Book of 13 *Edw.* 4. 9, 10? A Merchant Stranger made

13 *Edw.* 4. 9, 10.

made ſute before the Kings Privy councel, for certain Bailes of Silk feloniouſly taken from him, and it was moved that this matter might be determined by Common Law, unto which motion the Lord Chancellor doth there anſwer; This ſute is brought by a Merchant, who is not bound to ſue according to the Law of the Land, nor to tarry the tryal of twelve men, nor other ſolemnity of the Law of the Land; albeit, the King hath juriſdiction of him within the Realm, and may cauſe him to ſtand to his Judgement, yet this muſt be according to the Law of Nature, which ſome call the Law Merchant, which is a Law univerſall throughout the word; theſe are the words of that Book, & it is there reſolved by all the Juſtices, That if the Merchandizes of ſuch a Merchant ſtranger, be ſtollen and waved by the Felon, the King himſelfe ſhall not take thoſe Merchandizes as waifes, though in that caſe the goods of another perſon were loſt by the Common Law of *England*. Doth not this caſe make it manifeſt, that in the judgement of our Common Law, Merchandizes that croſſe the Seas, are goods of another nature, quality, and

and conſideration, than other goods and Chattels which are poſſeſſed within the Realm, and do not croſſe the Seas? This learning is not common in our Books, and therefore I think it meet to exemplifie this difference with more caſes in this point.

If two Merchants be Joynt-Owners, or Partners in Merchandizes, which they have acquired by a Joynt-Contract, in this caſe the one ſhall have an Action of Account againſt the other, *die legem mercatoriam*, ſaith the Regiſter, *fol.* 135. and *F. N.* 117. *D.* and yet by the rule of the Common Law, if two men be joyntly poſſeſſed of other goods which are not Merchandizes, the one ſhall not call the other to account for the ſame.

Reg. fol. 135. *F.N.* 117. *D.*

Again, if two Merchants have a joynt Intereſt in Merchandizes, if the own die the Survivor ſhall not have all, but the Executor of the party deceaſed, ſhall by the Law Merchant call the Survivour to an account for the moytie *F. N.* 117. *D.* whereas if there be two Joynts of other goods which are not Merchandizes, the Survivor ſhall have all, *per jus accreſcendi*, even by rule of the Common Law.

F.N. 117. *D.*

Again, in an Action of Debt, upon a ſimple

ſimple Contract which is without Deed in writing, the Defendant by the Common Law may wage his Law, that is, he may bar the Plantiff of his Action by taking an Oath that he doth not ow the Debt nor any part thereof, and yet in *Itin. Derby* 2 *Edw.* 3. *John Crompton* Merchant, upon a Contract without Deed, the Defendant would have waged his Law, but was not permitted ſo to do, and ſo Judgement was given againſt the ſaid Defendant. 2 E. 3.

Again, the goods of Eccleſiaſtical perſons are diſcharged of Toll by the Common Law, *ſi non exerceat Marchandizas de eiſdem*, ſaith the Regiſter, 259. *a.* for then their goods are charged, being now become goods of another nature, when the ſame are turned into Merchandizes; ſo are the goods of the *French* Nobility diſcharged by Gabels and Impoſitions if they traffique not, but if they traffique, ſaith *Bodin*, their goods are charged like other Merchandizes. Regiſt. 259. *a.* *Bodin.*

Again, for goods wrongfully taken within the Land, the Common Law giveth remedy againſt the Treſpaſſer, or the wrongfull Taker onely; but if an *Engliſh* Merchant be ſpoiled of his Merchandizes

chandizes upon the Sea, or beyond the Sea, by the Subject of another King, the Regiſter doth give him a Writ of Repriſall againſt all the Subjects of that Nation, *Regiſt.* 122.6. and 46 *Hen.* 3. we find a more brief cauſe of Juſtice, for there the King in reſpect of the loſs which certain Merchants of *London* had ſuſtained, by an arreſt made of their goods, made by the Counteſſe of *Flanders*, doth grant unto them all the Merchandizes whereof the *Flemings* were poſſeſt in *England*, *Rot. Pa.* 3 *E.* 1. *m.* 19. *in Archivis turris London*: Whereupon the Lord Mayor of *London*, did ſeize ſo much goods of the *Flemiſh* Merchants as amounted to 730. Marks, and delivered the ſame to *Thomas Debaſſing*, and other Merchants, who had ſuffered loſs by that arreſt; and in the ſame Roll of 3 *Ed.* 1. the Lord Mayor of *London*, and Bailiffs of *Southampton*, are commanded by the Kings Writ, *Quod omnes Mercatores Londienſes ad partes Angliæ accedentes per bona & catalla ſua diſtringuantur ſed in legem mercatoriã & conſuetidinem Regni ad ſatisfaciendum Mercatoribus Florentinis de pecuniis ipſi mutuo tradiderunt Willielmo Epiſcopo Leodienſi.* Here we ſee that *Lex mercatoria*, which doth apparently

Regiſter 122 6. 46 *Hen.* 3

Rot. Pa. 3 *E.* 1. *m.* 19. *in Archis turris London.*

3 *Edw.* 1.

apparently differ from the ordinary Cõmon Law of this Kingdom, is ſaid to be *Conſuetudo Regni.*

And laſtly, in a ſute at the Common Law no mans Writing can be pleaded againſt him as his Act and Deed, unleſſe the ſame be ſealed and delivered; but in a ſute between Merchants, Bills of Lading, Bills of Exchange, being but Tickets without Seals, Letters of advice and credences, Policies of aſſurance, Aſſignations of debts, all which are of no force at the Common Law, are of good credit and force by the Law Merchant.

Thus we ſee how Merchandizes do differ from other goods and Chattles in the eye of the Law, and how the Law Merchant doth differ from the common Law of *England*, and how the Common Law doth admit and allow thereof. Our Parliaments likewiſe have not onely made extraordinary proviſion for the more ſpeedy recovery of Debts due unto Merchants for their Merchandizes, than is provided by our Common Law, as appeareth by the Statute of *Aſton Burwell*, made the 11 *Ed.* 1. and the Statute *de Mercatoribus* made 13 *Ed.* 1. but alſo have

have course of proceedings, in cases of Merchants differing from the course of our Common Law, for by the Statute of 27 E. 3. Cap. 2. 27 *Ed. 3. cap.* 2. it is declared, that the proceedings in causes of Merchants shall be from day to day, and hour to hour, according to the Law of the Staple, and not according to the course of the Common Law; and by another Article in the same Parliament, that all Merchants comming to the Staple, should be ruled according to the Law of Merchants, touching all things comming to the Staple, and not by the Common Law of the Land; and by another Article, that neither of the Benches, nor any ordinary Judges of the Common Law shall have any Jurisdiction in those cases; and lastly, that the Law of Marque and Reprisall, which is a branch of the Law Merchant, shall be used as it had been used in times past. So as the Parliament doth but declare the ancient Law, and doth not introduce a new Law in those cases.

Untill I understood this difference between Merchandizes & other goods, and between the Law Merchant and the Common law of *England*, I confess

I

I did not a little marvell, *England* being so rich, and entertaining Traffique with all Nations of the World, having so many fair Ports and so good Shipping, the King of *England* also being the Lord of the Sea, and also a principall part of his Royal Revenue consisting in duties payable for Merchandizes, so as many Questions must of necessity arise in all ages touching Merchants and Merchandizes, What should be the cause that in our Books of the Common Law of *England*, there are to be found so few cases concerning Ships or Merchants, or concerning Customes or Impositions payable for Merchandizes.

But now the reason thereof is apparent, for the Common Law of the Land doth leave these cases to be ruled by another *Law*, namely the *Law* Merchant, which is a branch of the *Law* of Nations.

The *Law* Merchant, as it is a part of the Law of Nature and Nations, is universall and one and the same in all Countries in the World, for as *Cicero* saith of the *Law* of Nations, *Non erit alia lex Romæ, alia Athenis, alia nunc, alia posthac, sed & omnes gentes & omni tempore una lex eademq;* Cicero.

eademq; perpetua continebit, &c. So may we say of the Law Merchant, there is not one Law in *England*, another in *France*, another in *Spain*, another in *Germany*, but the same rules of reason, and the like proceedings of the Law Merchant are observed in every Nation; for as our Chancellor of *England* affirmeth,
13 E. 4. 9. 13 *E.* 4. 9. That the proceedings of the Law Merchant ought to be according to the Law of Nature, which is universall; so say the Civilians of severall Nations. The *Italian* Doctor saith, *In curia mercatorum naturalis æquitas præcipue expectanda, & ex æquo & bono causas dirimendas esse*; The *French* man saith, *In curia mercatorum proceditur de mera æquitate omissis solemnitatibus & apicibus juris*; The *Spaniard* likewise saith, *Apices & subtilitas juris non considerantur in foro mercatorio*; whereby it is manifest, that causes concerning Merchants and Merchandizes, are not wont to be decided by the peculiar and ordinary Laws of every Country, but by the generall Law of Nature and Nations, out of which resulteth this Conclusion. Suppose it be admitted that by the positive Law of the land Taxes and Tallages may not be laid upon

on our goods within the land, without an Act of Parliament, yet by the Law of Nations, and by the Law Merchant, which are also the Law of *England*, in cases of Merchandizes the King of *England*, as well as other Kings, may by vertue of his Prerogative, without Act of Parliament, lay Impositions upon Merchandizes crossing the Seas, being goods whereupon the Law doth set another character than goods possessed in the land, as is before expressed.

CHAP. IV.

Of the Imperial or Civil Law, and of the extent of the Juriſdiction thereof, of what force it is at this day within the Monarchies of Europe, *and in what caſe it is received within the King of* Englands *Dominions, and how it warranteth all Kings and Abſolute Princes to lay Impoſitions upon Merchandizes.*

Lex Civilis.

WHen the City of *Rome* was *Gentium Domina & Civitas illa magna quæ regnabat ſuper Reges terræ*, The *Roman* Civil Law being communicated unto all the Subjects of that Empire, became the Common Law, as it were, of the greateſt part of the inhabited world; yet the extent thereof was never ſo large as that of the general Law of Nature, as it is noted by *Cicero*, *offic. lib.* 2. *Majores noſtri aliud jus Gentium, aliud Civile jus eſſe voluerunt, quod enim civile non idem continuo Gentium, quod autem idem civile eſſe debet*, whereby it is manifeſt, that the Law of Nations is and ought to be a binding Law

Cicero offic. li. 2.

Law in all States and Countries; as it is binding, ſo it is perpetuall, and cannot be rejected, as the Roman Civil Law is rejected in moſt of the Kingdoms in *Europe*, in ſuch caſes as do ariſe within the body of every Kingdom.

In *France*, *Philip le Bell* (ſaith *Bodin*) *de Repub. lib. 2. cap. 8.* when he erected the Courts of Parliament at *Paris*, and *Mountpelier*, did expreſly declare, That they ſhould not be bound in their judgments by the rule of the *Roman* Civil Law, and in erecting of all the Univerſities of *France*, they are charged in their ſeverall Charters, not to revive the profeſſion of the Civil and Common Law, as of binding Laws in that Kingdom, and therfore *Earum non imperio ſed ratione utimur*, ſaith another learned Doctor of *France*. *Bodin de repub. li. 2 cap. 8.*

In *Spain*, ſaith *Bodin*, in the ſame place, ſeveral Kings have made Edicts, that no man upon pain of death, ſhould allege the *Roman* Civill Law as a binding Law in their Dominions. *Bodin.*

And that *Stephen* King of *Spain* did forbid the publique pleading of the Civill Law. *Stephen King of Spain.*

As for *England*, to omit what Pope *Eluther ius* wrote in his Epiſtle to *Lucius* *Pope Eluther.*

the first Christian Monarch of the *Britains*, and whereof mention is made in Saint *Edwards* Laws *de protestate Regia & Ecclesiastica*, published in the time of 3 *Hen.*8. *petiistis* (saith he) *leges Romanas & Cæsaris vobis transmitti quibus in regno Britaniæ uti voluistis, leges Romanas & Cæsaris reprobare possumus, legem Dei nequaquam, &c.* In a Parliament holden in *England* 11 *R.* 2. when a course of proceedings in Criminal causes, according to the Civil Law was propounded, an answer was made by all the States assembled, That the Realm of *England* neither had been in former times, nor hereafter should be ruled and governed by the Civil Law,

11 R.2. *Rot. Parliament.* 11 *R.* 2. in *Archivis turris*

Chopinus. *London*, and accordingly *Chopinus* the *French* Lawyer in his Book *de Domino Franciæ tit.* 28. speaking of the Civil law, *hujus Romani juris* (saith he) *nullus apud Anglos usus, sed ex veteri gentis instituto Britani regnitur legibus municipialibus quas illis majorum mores præscripserunt.*

But this is to be understood of causes arising within the Land onely; for all Marine and Sea causes which doe arise for the most part concerning Merch. and Merchandizes crossing the seas, our Kings have

have ever uſed the *Roman* Civil Law for the deciding & determining therof, as the *Romans* did uſe the Law of the *Rhodians* in thoſe caſes, according to the memorable reſcript of the Emperour *Anthonius*, *terram ſuis legibus Rhodiis Regi*. How be it now, thoſe Laws of the *Rhodians* are digeſted and incorporated into one body of the Civil Laws, the juriſdiction touching cauſes ariſing upon the Sea, is committed by the King of *England* to his Admirall, who in his Court of Admiralty doth proceed in thoſe caſes according to the rule of the Civil Law. *Rhodians.*

Now for the Rules of the Civill Law touching the power of Kings, in laying Impoſitions upon Merchandizes, the ſame are clear without queſtion, and obſerved without contradiction in all the nations of the world, *Regii tantum juris ac muneris eſt vectigalia imponere, redditus, ſeu vectigalia portus quæ perveniant ex his quæ in portum vel ex portu vehentur regalia ſunt, Rex qui non recognoſcit ſuperiorem poteſt inſtituere nova vectigalia, &c. hoc eſt jus totius mundi, totus mundus hoc jure utitur*, the Doctors who interpret the Imperiall Law, have their Books full of theſe Rules.

And if it be objected, That these rules of the Imperiall Law are onely intended of the Emperour, a learned Civilian hath this position, *plus juris habet Rex in Regno quam Imperator in imperio, quia Rex transmittit regnum ad successionem quod non facit imperator, qui est tantum electionis, &c.*

Lastly, when I speak of the rules of the Civil Law, and make use thereof, I do apply the same onely in cases of Merchandizes crossing the Seas, which I do expresse by way of protestation, that I may not be mistaken here, and in other places where I cite the Text of the Imperiall Law, as if I intended that Law to be of force in *England* generally, as in other places.

CHAP.

CHAP. V.

Of the Canon or Eccleſiaſtical Law, and how far forth it doth examine and reſolve this Queſtion in caſes of Conſcience only.

THe Canon Law is received and admitted in *England*, as a binding Law in caſes Eccleſiaſticall, which are indeed the proper Subjects of that Law. But this queſtion of Impoſition is meerly Civil, and therefore the Canon Law doth not handle it but in caſes of Conſcience only, & ſo indeed it doth examin and determine in what caſes an abſolute Prince may with a good conſcience lay and demand new Impoſitions, *Decret. cauſa 24. Queſti. 3. Princeps poteſt indicere nova vectigalia*, and in *Summa ſummarum tit. de gabellis & exactionibus*, theſe rules and diſtinctions are laid down. The Canon Law. *Decret. cauſa 24 Queſt. 3.*

Quilibet Monarcha poteſt imponere novum vectigal, quod tamen boni viri arbitrio moderandum eſt, poteſt Princeps imponere vectigal ultra conventionem in duobus caſibus.

1. quando redditus ejus non sufficiunt ad segimẽ boni & cõmunis & decentiam status ejus. 2. quando non sufficiunt ex nova emergentia principes enim sunt à Deo instituti ut nõ quærant propria Lucra, sed cõmunem utilitatem populorum, lilia agri neque arant neque nent, which may be applyed, saith a *French* Monk, to all Princes, but espicially to the Kings of *France*, because they bore the Lilies.

Canonists. The Canonists do likewise allege the example of our Saviour, who paid an Poll-money. Imposition of Poll-money, and wrought a miracle to enable himself to do it; that the Tribute-money which Christ commanded to be paid, *Date Cæsari quæ sunt Cæsaris*, and the Custome which Saint *St. Paul.* *Paul* willeth every Christian to pay willingly, *reddite omnibus; cui tributum, cui vectigal*, were but Impositions raised by the Emperours Edict only, without the consent of the people; and yet Saint *Paul* requires obedience to Princes in that case, not only for fear of the Princes displeasure, but for conscience sake, *non solum propter iram sed propter conscientiam.*

CHAP.

CHAP. VI.

That this Queſtion of Impoſition may be examined and decided as well by the rules of the Laws before mentioned, as by the rules of our Municipiall Laws or Common Law of England.

FOraſmuch as the general Law of Nations, which is and ought to be Law in all Kingdoms, and the Law Merchant is alſo a branch of that Law, and likewiſe the Imperiall or Roman Law have been ever admitted, had, received, by the Kings and people of *England*, in cauſes concerning Merchants and Merchandizes, and ſo are become the Law of the Land in thoſe caſes; why ſhould not this Queſtion of Impoſitions be examined and decided by the rules of thoſe Laws ſo far forth as the ſame doth concern Merchants & Merchandizes, as well as by the rules of our Cuſtomary or Common Law of *England*, eſpecially be cauſe the rules of thoſe other Laws are well known to the other Nations, with whom

whom we have commerce, and to whō and from whom all Merchandizes are transported, wheras the rules of our own Municipall Laws are only known within our Islands; and if this Question may be decided either by the Laws of Nations, or by the Law Merchant which is but a member thereof, or by the Roman Civil Law, we find this point clearly and absolutely determined, and over-ruled by the rules of those Lawes, *viz.* That all absolute Kings and Princes may set Impositions upon Merchandizes by their Prerogatives, and thereupon we may conclude, that since one Monarch hath as much power as another, as *Fortescue* in his Book *de Laudibus legum Angliæ*, affirmeth, the K. of *England*, as well as any other King, as the Emperour himself, *cum ipse omnes libertates habet in regno suo quas imperator vindicat in imperio*, As King *William Rufus* told the Arch-Bishop *Anselm*, may by vertue of his Royal Prerogative annexed to his Crown, and inherent to his Scepter, lay Impositions upon Merchandizes exported or imported into any of his Kingdoms or Doninions.

Fortescue

CHAP.

CHAP. VII.

Of the Kings Prerogatives in general, and that the ſame do conſiſt in certain ſpeciall points or caſes reſerved to the abſolute power of the Crown; when the Poſitive Law was firſt eſtabliſhed, and that the Canon Law of England *doth acknowledge and ſubmit it ſelf to thoſe Prerogatives.*

BY the Law of Nature all things were cõmon, and all perſons equal, there was neither *Meum* nor *Tuum*, there was neither King nor Subject; then came in the Law of Nations, which did limit the Law of Nature, and brought in property, which brought in community of things, which brought in Kings and Rulers, which took away equality of perſons, for property cauſed Contracts, Trade, and Traffique, which could not be miniſtred without a King or Magiſtrate; ſo as the firſt and principal cauſe of making Kings, was to maintain property and Contracts, and Traffique, and Commerce amongſt men. Hereupon by the

the ſame Law of Nations, Tributes and Cuſtomes became due to the King or Prince to maintain him in his place of Government, *quaſi Miniſterii ſui ſtipendia*, ſaith the School-man, *Deo Miniſter eſt tibi in bonum ideo & tributa poteſtas*, ſaith Saint *Paul*, and all theſe things, namely Property, and Contract, and Kings, and Cuſtomes, were before any poſitive Law was made; then came the poſitive Law, and limited the Law of Nations, whereas by the Law of Nations the King had an abſolute and unlimited power in all matters whatſoever. By the poſitive Law the King himſelf was pleaſed to limit and ſtint his abſolute power, and to tye himſelf to the ordinary rules of the Law, in common and ordinary caſes, worthily and princely, according to the Roman Emperour, *Digniſſimum Principe Rex ſe allegatum legibus confiteri*, retaining and reſerving notwithſtanding in many points that abſolute & unlimited power which was given unto him by the Law of Nations, and in theſe caſes or points, the Kings Prerogatives do conſiſt; ſo as the Kings Prerogatives were not granted unto him by the people, but reſerved by himſelf to himſelf, when the poſitive

Law

Law was first established; and the King doth exercise a double power, *viz.* an absolute power, or *Merum Imperium*, when he doth use Prerogatives onely, which is not bound by the positive Law; and an ordinary power of Jurisdiction, which doth co-operate with the Law, & whereby he doth minister Justice to the people, according to the prescript rule of the positive Law; as for example, the King doth not condemn all Malefactors, but by the rule of the positive Law; but when the Malefactor is condemned by the Law, he giveth him a pardon by his absolute Prerogative.

Again, the King doth punish the breach of the Peace within the Land, by the ordinary course of the Cõmon Law, but he doth make War and Peace with Forreign Nations, *Quod pertinet ad liberum jus gladii*, as a Doctor speaketh, by that absolute and unlimited power, which the Law of Nations hath given unto him.

Again, the King doth establish the Standard of Money by vertue of his Prerogative only, for the Common Law doth give no rule touching the matter, or form, or value thereof; but when those

those Monies are dispersed into the hands of the Subjects, the same do become subject in respect of the property thereof, to the ordinary rules of the Common Law.

Again, the right of Free-hold and all Inheritance, and all Contracts reall and personall, arising within the Land, are left to be decided by the positive Law of the Land; but the Government and ordering of Traffique, Trade, and Commerce, both within the Land and without, doth rest in the Crown as a principall Prerogative, wherein the King is like to *Primum mobile*, which carrieth about all the inferiour Spheres in his superiour Course, and yet doth suffer all the Planets underneath him to finish all their divers and particular courses; or rather he doth imitate the Divine Majesty, which in the Government of the world doth suffer things for the most part to passe according to the order and course of Nature, yet many times doth shew his extraordinary power in working of miracles above Nature.

And truly, as the King doth suffer the customary Law of *England* to have her

her courſe on the one ſide, ſo doth the ſame Law yeeld, ſubmit, and give way to the Kings Prerogative over the other; and therefore in the 1 *Hen. 7. fol.* 23. there is a rule, That every Cuſtome is void in Law *quæ exaltat in prærogativum Regis*, which is an argument, that the Kings Prerogative is more ancient than the cuſtomary Law of the Realm; beſides, the power of the Kings Prerogative above the Common Law doth appear in this, That whereas all privileges do flow, and are derived from the Kings Prerogative, and every privilege in one point or other *privat communem legem*, yet the Common Law doth admit and allow of privileges granted by vertue of the King Prerogative. 1 H. 7. fol. 23.

CHAP. VIII.

Of the Kings Prerogative in the ordering and governing of all Trade and Traffique in Corporations, Markets, and Fairs within the Land, and the Common Law doth acknowledge this Prerogative, and submit it self there unto.

FIrſt, it is manifeſt that all Corporations of Cities and Boroughes within the Land, were chiefly inſtituted for Trade and Commerce, and not by the rule of Common Law; no ſuch Corporation can be made but by the Kings Charter; for though there have been ſome Corporations which have been time out of mind, yet the Law preſumes that the ſame at firſt had their beginnings by the Grant of the King; beſides, we find in divers ancient Charters made unto thoſe Corporations, a power granted unto the King to take *de omnibus rebus venalibus* within their Liberties, certain ſums of Money, *viz. de libra piperis*, ſo much, *de libra zinziberis*, ſo much, *de quolibet*

quolibet panno, &c. for murage, or towards the reparation of their Walls, which is nothing elſe but an Impoſition laid by the Kings Charter to maintain thoſe Cities & Boroughs wherein Trade and Traffique is maintained; wee find ſuch a Charter granted to *Nottingham*, 3 *Edw. 1. pat. m. 21. in Arch. turris London.* The like is granted to *Cloneniell*, and to ſome other Towns in *Ireland*. *F. N.* 170. *B.* We find a Patent granted to a Burrough in *England*, to take for five years a certain ſum of Money of every Paſſenger, toward the paving of the ſame Town.

3 Edw. 1 pat. m 21 F.N. 170 D.

Again, no Fair or Market may bee holden within the Realm, neither can a multitude of Subjects aſſemble themſelves together to that end, without a ſpeciall Warrant or Grant of the King; and when a Subject hath a Grant of a Fair, he hath a Court of Py-powder incident thereunto, wherein the proceeding in Summary *& de plano* from hour to hour, as in the Court of Merchants; And for the Government of all Fairs and Markets, eſpecially touching Weights and Meaſures, the Standard whereof was firſt eſtabliſhed by the Kings Ordinance,

to whom the eſtabliſhing of the Standard Monies, which is *menſura publica omnium rerum commutabilium*, is alſo reſerved as a ſpeciall Commoditie.

Beſides, in every Fair and Market where things are bought by retail, for the neceſſary uſe of the Buyer, and not to ſell the ſame again as Merchandizes in another Market, for that is regrating and unlawfull, by the rule of the Common Law, There is a Toll taken, which is nothing elſe but an Impoſition laid upon the Buyer, and that that Toll was originally impoſed by the Kings Prerogative, it is manifeſt in this, that the ancient Tenants of the Crown, namely the Tenants in ancient Demeaſne, are diſcharged of Toll in all Markets and Fairs; and that the King by Charter hath diſcharged divers other perſons of Toll, as appeareth in the Regiſter of Writs, and *Fitz. Na. Brevium*, where we find divers Writs *eſſend quiet de Theolneo.* But this diſcharge of Toll is onely for things bought for neceſſary uſe of the Buyer, and for Merchandizes, for the Tenants in ancient Demeaſne are diſcharged of Toll, for ſuch things only as are for their proviſions, or manurance of their lands, and

and in the Writ which dischargeth the goods of Ecclesiasticall persons of this Toll, there is this clause, *dummodo non faciat Merchandizas de iisdem*, as is before declared.

Lastly, the Kings Prerogative in the Ordering and Government of Trade within the Realm, doth appear in that notable Charter granted to the Abbot of *Westminster*, recited in the Register of Writs, *fol.* 107. wherein the King doth grant to the Abbot and his Successors, to hold a Fair at *Westminster* for thirty two dayes together, with a prohibition that no man should buy or sell within seven miles of that Fair, during that time.

Register of Writs, fol. 107.

CHAP. IX.

That the King hath another Prerogative in the Government in the Trade of Merchandizes crossing the Seas, differening from the Prerogative which he useth and ordereth in Trade and Traffique in Markets and Fairs within the Land, and of the difference between Custome and Toll by the rules of the Common Law.

TOuching Merchandizes crossing the Seas outward and inward, the same are of another quality, and the Law hath another consideration thereof, than it hath of such things as are bought and sold in Fairs and Markets within the Land, as is before expressed; and therefore the duties payable upon the exportation and importation of Merchandizes, have another name, being called Customes, and not Toll, and are also paid in another manner, for Customes must be paid before the Merchandizes be discharged and brought to Land; whereas toll is not paiable but for goods brought into

Custome and Toll.

into the Fair or Market.

Again, Cuſtome muſt be paid whether the Merchandizes be ſold or not, but Toll is not due but for goods bought and ſold in the Market.

Again, Cuſtom is alwayes paid by the Merchant, who ſelleth or intendeth to ſell his Merchandizes in groſſe; but Toll is ever paid by the party who buyeth ſome Commodity for his proper uſe and proviſion by retail.

Laſtly, if Cuſtomes be not paid or agreed for before the Merchandizes be diſcharged and brought to Land, the Merchandizes are *ipſo facto* forfeited, and may preſently be ſeized to the uſe of the King; but if Toll be not paid, the thing ſold is not forfeited, only it may be diſtrained and detained till the Toll bee paid; or an Action upon the Caſe may be brought for the Toll. Theſe differences between Cuſtome and Toll do apparently prove that Merchandizes for which Cuſtomes are paid, do differ from other goods ſold in the Markets and Fairs, for which Toll is taken, and that the Trade of Merchandizes croſſing the Seas, and the Trade that is uſed in Markets and Fairs, are ordered by diffe-

rent Prerogatives; and as the Tolls of severall kinds which are taken in Markets, Fairs, and Towns Corporate, were first imposed by vertue of that Prerogative, whereby the King ordereth all Trade within the Land; so by vertue of that other Prerogative whereby the King governeth the Trade of Merchandizes crossing the Seas, the Crown of *England*, ever since the first institution of the Monarchy, hath from time to time raised and received out of Merchandizes, Customes, and Impositions, of divers Nature and Natures, according to the diversities of Merchandizes exported and imported, and the divers occasions and necessities of the comercion.

CHAP.

CHAP. X.

Of the ancient duty called Cuſtome, payable for our principall Commodities exported, and that it was originally an Impoſition.

THE ancient duties payable for Merchandizes, were but of two kinds, and known by two names, Cuſtomes and Prizes; Cuſtomes were paid for Homebred and Native Commodities exported, and Prizes were taken out of Forreign Commodities imported.

The Native Cõmodities out of which Cuſtome was paid, were Wooll, Woollfells, and Leather, and this Cuſtome did conſiſt of certain rates or ſums of Mony, impoſed by the King upon thoſe Merchandizes exported, which rates were raiſed and reduced higher or lower, from time to time, as occaſion did ariſe; for although in the time of King *Edw.* 1. the Cuſtomes payable for thoſe Commodities were reduced to this certainty, *viz.* to a demi mark for every Sack of Wooll,

rent Prerogatives; and as the Tolls of severall kinds which are taken in Markets, Fairs, and Towns Corporate, were first imposed by vertue of that Prerogative, whereby the King ordereth all Trade within the Land; so by vertue of that other Prerogative whereby the King governeth the Trade of Merchandizes crossing the Seas, the Crown of *England*, ever since the first institution of the Monarchy, hath from time to time raised and received out of Merchandizes, Customes, and Impositions, of divers Nature and Natures, according to the diversities of Merchandizes exported and imported, and the divers occasions and necessities of the comercion.

CHAP.

CHAP. X.

Of the ancient duty called Cuſtome, payable for our principall Commodities exported, and that it was originally an Impoſition.

THE ancient duties payable for Merchandizes, were but of two kinds, and known by two names, Cuſtomes and Prizes; Cuſtomes were paid for Homebred and Native Commodities exported, and Prizes were taken out of Forreign Commodities imported.

The Native Cõmodities out of which Cuſtome was paid, were Wooll, Woollfells, and Leather, and this Cuſtome did conſiſt of certain rates or ſums of Mony, impoſed by the King upon thoſe Merchandizes exported, which rates were raiſed and reduced higher or lower, from time to time, as occaſion did ariſe; for although in the time of King *Edw.* 1. the Cuſtomes payable for thoſe Commodities were reduced to this certainty, *viz.* to a demi mark for every Sack of Wooll,

a demi mark for every three hundred Wooll-fells, and a mark for every last of Leather, which we call now the great and ancient Custome, *ab initio non fuit sic*, these were not the rates from the beginning, for not long before that time there was a greater and more ancient Custome paid for the exportation of those Commodities, *Britanni* (saith Strabo) *vectigalia tollebant gravia earum rerum quas brevi trajectu in Galliam importabant*; this was *Magna Customa* in the time of the *Britans*; and though the certain rates thereof doth not appear, yet because the same were *gravia vectigalia* in those dayes, we may easily beleeve that Custome to have been greater than the demi mark for a Sack of Wooll.

Strabo.

Again, the Statute of *Magna Charta*, which was as ancient as King *John*, speaketh of ancient Customs payable for Merchandizes, and the Book of 29 *Edw.* 3. maketh mention of ancient Customes granted to King *John*, in the Town of *Southampton*, which doubtlesse were other Customes than that of the demi mark, &c. for that in the Record of the Tower, 3 *Edw.* 1. *Rot. fin.* 24. *&* *Rot.* Patent of the same year, *m.* 9. the demi mark which

which was first established by the Kings Letters Patents, is called *Nova Custuma*, and this was a diminution of the ancient Custome, saith the Book of 30 *H.* 8. *Dyer* 43. 38 H.8. Dyer 43.

Again, when the same King *Edw.* 1. had by his Writ onely, without Act of Parliament, established the Custome of the demi mark, &c. in *Ireland*, in all the Customers Accounts, which are found in the Pipe-Rolls, in the time of *Edw.* 1. *Edw.* 2. *Edw.* 3. in that Realm, it is also called *Nova Custuma*, which importeth as much as a new Imposition, for Imposition is a new name, and hath been of use but of late years, whereas every new charge laid upon Merchandizes in ancient times, was called *Nova Custuma*, as the Lord chief Baron *Fleming* observed in his Argument in *Bates* Case of Currans, in the Exchequor of *England*; but because this Custome of a demi mark was a reducement made by King *Edw.* 1. of the great and ancient Custome to that proportion which was then thought reasonable (as after upon sundry Petitions of the Commons, was allowed by the succeeding Princes) it obtained in tract of time, the name of the great and ancient Edw.1. Edw.2. Edw.3. *Bates* case de Currans in Scacio. per *Fleming* chief Baron.

cient Cuſtome; this Cuſtome of demi mark was not granted to the King by Parliament, but reduced to that rate by the King, by the prayer of the Cómons, as is expreſſed in the Record of 3 *Edw.* 1. *fin. memb.* 24. for albeit the Charter for confirmation of *Magna Charta*, made in 25 *Edw.* 1. doth recite, That the demi mark was granted by the Cominaltie, yet is there no Act of P. printed or recorded, wherein that grant of the Cominaltie doth appear, neither can it ſtand with the rule of reaſon that the demi mark being a diminution of the ancient Cuſtome ſhould proceed from the grant of the Cominalty to the King, for the King would never have accepted of ſuch a grant as did diminiſh his Revenue, neither had it been thank-worthy or acceptable, and therefore the King having a Negative voice, would never have given his aſſent to ſuch a grant in Parliament; but it is to be preſumed that this diminution of the ancient Cuſtome was made in Parliament, and not by Parliament, and that by prayer of the Commons, as the Record of 3 *Edw.* 1. *Rot. fin. memb.* 24. teſtifieth, the King was then well pleaſed for that time to draw down the

3 Edw. 1.

3 Edw. 1. *Rot. fin. memb.* 24.

the ancient Cuſtome to that rate, and the people did willingly yeeld and conſent to the payment thereof; and this I take to be the true interpretation of the Charter or Statute made in 25 *Edw.* 1. And therefore becauſe we find no Act of Parliament whereby the people did originally grant the great and ancient Cuſtomes to the King, and becauſe we find it was uncertain and ſubject to diminution and alteration, we may conclude, that it was but an impoſition laid by the King from time to time by vertue of his Prerogative, without any grant from the Cominalty of the Realm who can make no grant but by Act of Parliament; & in truth it were abſurd to affirme, that the great and ancient Cuſtome impoſed upon Native commodities of the Kingdom was firſt granted by Act of Parliament; ſince it cannot be imagined that ever thoſe commodities did paſſe out of the Kingdom, without Cuſtome, being equal in time with the firſt Scepter; and ſince the Scepter was eſtabliſhed many hundred years before the people were called to be in Parliament; beſides, the very name of Cuſtome doth note and argue that it began before any Act of Parliament

Statute 25 E. 1.

ment was made, for that it ſignifieth a duty payable or accuſtomable to be paid time out of mind, which in preſumption of Law, is before any Record; wherefore the rules in the Lord *Dyers* Book are
Dyer 29. good Law, *viz.* The King hath an Eſtate of Inheritance in the Cuſtome payable for Merchandizes, as being a Prerogative annexed to his Crown. And a-
30 H. 8. 43. gain, 30 *Hen.* 8. 43. Cuſtome is an Inheritance in the King by the Common Law, and not given by any Statute.

CHAP. XI.

Of the ancient duties called Prizes, taken out of Forreign goods imported, except Wines, and the petty-Cuſtomes of three pence of the pound were accepted by King Edw. 1. *in lieu of Prizes.*

FOr the Forreign commodities which are brought into *England*, our Kings in ancient times did not take any Rates, or Cuſtomes, or Sums of Money, but took ſuch part of the ſeverall commodities in ſpecie, as they thought fit for their proper

per uſe, paying for that they took a price as themſelves did likewiſe think fit and reaſonable, which was called the Kings price; this Prerogative is proved by the rule of the Imperiall Law, *Rex non recognoſcens ſuperiorem poteſt è India in propria cauſa*, and alſo by the rule which is given 31 *Edw.* 3. 60. where the Biſhop of *Norwich* having forfeited to the King thirty Talents of Beaſants of Gold, becauſe the quantity and value thereof was uncertain, it was adjudged that the Kings Houſe ſhould ſet down of what quantity and value every Talent ſhould be, and that the ſame ſhould be paid accordingly; and by the ſame Prerogative, whenſoever any Subject is to pay a Fine or Ranſome unto the King for a contempt, The King himſelf doth limit and ſet the Fine or Ranſome at his own will or pleaſure. 31 Ed 3. 60.

The Forreign commodities thus taken by the King in *Spain*, at his own price, were called Prizes, but becauſe theſe prizes were many times grievances to the Merchants, and brought little or nothing to the Kings Coffers, That prudent Prince *Edw.* 1. by that famous Charter called *Charta Mercatoria*, made in the

31 year of his reign, did remit unto all Merchant Strangers their prizes, and did grant *quod de cætero ſuper mercimonia Merchandizas vel bona ipſorum per ipſum Regem vel Miniſtros ſuos nullos nulla appretiatio vel eſtimatio apponeretur, & quod nulla priſa vel arreſtatio ratione priſæ inde fieret, &c.* and the Charter doth further recite, That for the remiſſion of theſe prizes the Merchants Strangers did grant unto the King three pence upon the pound, now called the petty-cuſtome, out of all Forreign Merchandizes imported, except Wines; and for our Native commodities exported, they would pay for every Sack of Wooll four pence, and for every three hundred Wooll-fells ſix ſhillings and four pence, and for every laſt of Leather a demi mark, over and above the duties payable by Denizens for the ſame commodities; which grant being made by the Merchants of every Nation, not being incorporated and made a body politick, is in reſpect of them of no force of the rule of the common Law, until the Kings charter made it good and maintained it, untill it was confirmed by Parliament 27 *Edw.* 3. which was fifty years after the date of the Charter, upon the

27 E. 3.

matter

matter these duties payable by Merchant Strangers, were onely Impositions raised and established by the Kings charter, which Charter being made in *England*, was afterwards established, exemplified under the Great Seal of *England*, and transmitted into *Ireland*, with a special Writ directed to the Officers of the Customes there, to levy three pence of the pound, and other duties mentioned in that Charter, as appeareth in the Red Book of the Exchequer there; by vertue of which Writ onely, without Act of parliament, the three pence of the pound and other duties were levied and paid to the Crown in *Ireland*.

CHAP. XII.

Of the ancient Customes payable for Wines, called Prizage *and* Butlerage.

Prizage and Butlerage.

THe most ancient Custome payable for Wines is Prizage, which is not any sum of Money, but two Tunns of Wine in specie, out of every Ship freighted with twenty Tun, the one to be taken before the Mast, and the other behind the Mast of the Ship; and the price which the King himself did limit to pay, was twenty shillings onely, for every Tun, as appeareth by an ancient 52 H. 3. Record of 52 *Hen.* 3. whereby we may conjecture, what easie rates the King gave for the prizes of other Merchandizes. This Custome of Prizage was meerly an Imposition, for it could not be granted by the Merchants of Forreign Nations, being no body politique, as is before declared; neither is there any Act of Parliament wherby our own Merchants did ever grant it unto the Crown.

This duty of Prizage was remitted unto

unto the Stranger, by the Charter of *Edw.* 1. before mentioned, and in lieu thereof, by vertue of the ſame Charter, the King before mentioned receiveth two ſhillings for every Tun of Wine brought in by Strangers, which we now call *Butlerage*; but *Prizage* is paid in Specie by all our own Merchants at this day, the Citizens of *London* only excepted, who having remiſſiõ of Prizage by a ſpecial charge, were charged with a new Impoſition called *Gauge*, *viz. de quolibet dolio* 1d. *de vinis venientibus London*, which was accounted Forreign, *Magno Rot. An.* 1 *Edw.* 1. in the Office of the Pipe at *Weſtminſter*; the laſt of theſe Impoſitions, which by the continuance have gotten the name of Cuſtome, was laid and impoſed three hundred years ſince, and have ever ſince been approved, and are now maintained by the Common Law of *England*, as the lawfull and ancient Inheritance of the Crown. 31 Ed. 1.

CHAP. XIII.

Of the ancient Officers which our Kings have created by vertue of their Prerogatives, to ſearch and over-ſee all ſorts of Merchandizes, and to collect the duties payable for the ſame.

AS our ancient Kings by vertue of their Prerogative without Parliament, have laid the Cuſtomes or Impoſitions before expreſſed, upon all ſorts of Merchandizes exported and imported; ſo by the ſame Prerogative have they ordained ſeverall ſorts of Officers to ſearch and over-ſee thoſe Merchandizes on which they had laid thoſe Impoſitions, namely the *Gauger* of Wines, a high Officer, is as ancient as the Impoſition of the *Gauge* it ſelf before mentioned; the *Alneger* of the cloths which is more ancient than any Act of Parliament that makes mention of the cloths, for there is a Record of 14 *Edw.* 2. *in Archivis turris* which ſpeaketh of the Alneger, the Packer of Woolls, the Gar-

Gauger.

Alneger.

14 *Ed.* 2.

bello

bellor of ſpices; beſides, the Officer of the Cuſtomes, *viz.* the Cuſtomer Comtroller and Searcher; all which Officers have ever taken Fees of Merchants, both Denizens and Aliens, not by grant of the Merchants or Act of Parliament, but by vertue of their ſeverall Patents granted from the King.

Cuſtomer. Comtroller. Searcher

CHAP. XIV.

Of other Impoſitions, beſides the ancient Cuſtomes before mentioned, laid upon Merchandizes, by ſeverall Kings and Queens ſince the Conqueſt; ſome of which Impoſitions have been diſcontinued or remitted, and ſome of them are continued and paid at this day; and firſt of the Impoſition ſet by King Edw. 1. *over and beſides the Cuſtomes ſpoken of before.*

IT appeareth in the Record of the Exchequer of *England*, That in 16 *Edw.* 1. an Impoſition of four ſhillings was laid upon every Tun of Wine brought into *England*, from certain Towns in *Gaſcogine* and *Spain*, and at this day anſwered and

compted for duty, for the ſpace of ten years, untill the 26 *Edw.*1. when it was remitted but during the Kings pleaſure only; it appeareth likewiſe 25 *Edw.*1. by
25 E. 1. the Charter of the confirmation then made of the Great Charter, that King *Edw.* 1. had for divers years before, ſet and laid an Impoſition of fourty ſhillings upon every Sack of Wooll exported, which *ad inſtantiam Communitatis* he was pleaſed to remit; which remittall was of meer Grace, upon the Petition of the Commons, after that Impoſition had been laid many years before; and it is to be noted, that this Impoſition of fourty ſhillings upon a Sack of Wooll, was taken and levied above twenty years together, after the new Impoſition of the demi mark upon a Sack of Wooll, which was ſet and eſtabliſhed; for that begun in 3 *Edw.*1. and this Impoſition of fourty ſhillings continued till 25 *Edw.*1. which is a ſtrong argument that the firſt eſtabliſhment of the demi mark, was not by a binding Act of Parliament, with a Negative voice, that no other duties ſhould be taken for thoſe Merchandizes, as was ſurmized, but was only a mitigation or reducement of a greater Cuſtome

paid

paid before, which was done of meer Grace, upon ſome reaſon of State at that time.

CHAP. XV.

Of the Impoſition ſet and taken by King Edward *the ſecond.*

KIng *Edward* the ſecond, in the beginning of his Reign, did as well take the ancient as the new Cuſtome upon Wooll, Wooll-fells, and Leather, which ancient Cuſtom muſt needs be intended an ancient Impoſition over and beſides the demi mark, which was then called the new Cuſtome, and this appeareth by a Record in the Tower, 3 *Ed.* 2. *Clauſ. memb.* 16. where the King directeth his Writ, *collectoribus ſuis tam antiquæ quam novæ cuſtomæ lanarum pellium & corriorum*, and requireth them to pay certain Debts of his Fathers, King *Edward* 1. out of their old and new Cuſtomes, and a hundred thouſand pound *pro damnis occaſione retardationis ſolutionis debitis, &c.* and howbeit afterwards, he being a weak 3 Ed. 2.

Prince and misguided by ill Counsell, and over-ruled by his unruly Barons, was driven first to suspend the payments of his Customes of three pence the pound, and other duties contained in *Charta Mercatoria*, during pleasure only, as appeareth by his Writs of *Supersedeas*, directed to the Collectors of his Customes, 3 *E.* 2. *Clauſ. memb.* 16. and after that by an Ordinance made 5 *Edw.* 2. utterly to repeal that Charter, and to abloish all other Impositions raised or levied since the coronation of his Father, *Ed.* 1. except the customes of the demi mark; notwithstanding after that, again *Anno* 11. of his Reign, when he wanted Money for his Expedition into *Scotland*, *exquirentes viam* faith he in his Writ to the collectors of his customes at *London*, *Rot. fin. memb.* 12. *in Archivis turris, quibus posſemus pecuniam habere commodius & decentius, tandem de consilio & advisamento quorundam mercatorum inveniemus subscriptum*, which was, that he should receive by way of loan forsooth (which never was repaid) a greater increase of custom upon all merchandizes imported and exported, for it is expressed in the VVrit, that *præter incrementum de lanis coriis & pellibus lanutis*,

11 E. 2. The Writ to his Collectors of his Customs.

tis, which was a third part more than the demi mark, *viz.* twenty ſhillings for every Noble; the King was to receive for every coloured cloth worth three pound *ſterling*, a Noble; for every other cloath worth fourty ſhillings, four ſhillings; for every peece of Scarlet, a Mark; for every Tun of VVine, five ſhillings; for all Forreign commodities called *Averdepois*, two ſhillings the pound; all which ſums of Mony he commandeth the Collectors of his cuſtomes to collect to his uſe upon their Merchandizes; which levy or collection, though it bear the name of a loan, being not made by authority of Parliament, nor with the conſent of the whole cominalty, but taken up by the Kings VVrit onely, was nothing elſe but an Impoſition laid upon Merchandizes by the Kings Prerogative.

Collectors of his Cuſtoms.

CHAP. XVI.

Of the Impoſitions laid and levied upon Merchandizes, by King Edward 3.

KIng *Edward* the third reigned a full Jubilee of years, for he dyed in the fiftieth

fiftieth year of his reign; and during all this time, as there lay upon him a continuall charge for the continuance of his VVars, ſo was he continually ſupplied with his cuſtoms and Impoſitions which he had laid upon Merchandizes, whereof he was ſo great a huſband, & by reaſon of his good huſbandry ſpent ſuch huge ſums of Money, as there went a report in thoſe dayes, that *Raimundus Lullius* the famous Alchimiſt, did make that *Elixer* for him, whereas his improving of thoſe duties which were paid for Merchandizes, was the true Philoſophers Stone, which did enrich him, and enable him to ſpend ſo many Millions in his VVars in *France*.

Raimundus Lullius.

In the firſt year of his reign, by his wit only, without Act of Parliament, he gave new life to *Charta Mercatoria*, made by *Edw.* 1. and repealed by *Edw.* 2. or rather by unruly Barons, for the words of the Writ are, That the cuſtomes and duties payable by the Charter, *prætextu ordinationum per quoſdam magnates in regno noſtro factos, ad tempus aliquod ceſſarunt, & jam adnullatis dictis ordinationibus colligi debent & levari, ſicut tempore dicti Avi noſtri, &c.*

1 *Ed.* 1. *Rot. fin. m.* 30. *in Archivis Turris.*

1 Edw. 1. *Rot. fin. memb.* 39. *in Archivis turris.*

Afterwards

Afterwards the Records of this Kings time do plentifully declare, That he by vertue of his Prerogative, without Act of Parliament, laid many great Impoſitions, and raiſed extraordinary profit upon Merchandizes, though not alwayes after one manner, yet all the means he uſed may be reduced unto three kinds.

Sometimes he did impoſe certain rates or ſums of Money upon Merchandizes, as fourty ſhillings upon a Sack of Wooll, with a ratable proportion upon other commodities, for levying whereof hee only ſent out his Writs to the Collectors of his Cuſtomes in every Port; and this kind of Impoſition being of the nature of the Impoſitions now in queſtion, was more uſuall and frequent than any other in this Kings reign, as appeareth by ſundry Records in the Exchequer, and in the Tower of *London*, 17 *E.* 3. *Rot.* 308. *in Sccio Angliæ.* 21 *E.* 3. *Rot. Parliament. numb.* 11. *in Arch. turris*, 24 *E.* 3. *Rot.* 12. *Sccio Angliæ.* 25 *E.* 3. *Rot. Parliament.* 11, 22. *in Arch. turris.* 27 *E.* 3. *Rot.* 7. *in Sccio Angliæ.* 30 *E.* 3. *Rot.* 10. *Sccio Angliæ.* 38 *E.* 3. *Rot. Parliament. numb.* 26. *in Arch. turris.* 40 *E.* 3. *Rot.* 7. *Sccio Angliæ.* 50 *E.* 3. *Rot. Parliament. numb.* 163. *in Arch. turris.*

Le Records. 17 *Ed.* 3. *Rot.* 308. *in Sccio. Angliæ, &c.*

At

At other times he ſent out Commiſſions to take up great quantities of Wooll and other commodities, at a low price, ſet by himſelf, and tranſported the ſame beyond the Seas, where he made the beſt profit thereof, for payment of the wages of his Army there, as appeareth by a ſpeciall Record in the Tower, 12 E. 3. *Rot. Almaniæ pars* 1. *numb.* 3. *in dorſo.* Theſe taking prizes of Engliſh Merchandizes, are the firſt I find in any Record (for the Kings proviſion of Houſhold, is of another nature.) But the King took theſe Woolls in point of Prerogative, as his Predeceſſors were wont to take prizes of all Forein commodities, untill King E. 1. did remit all prizes to Merchant Strangers, by *Charta Mercatoria*, as is before expreſſed; and alſo ſuch of Engliſh Merchants as would pay the cuſtomes reſtrained by that Charter, were offered the like immunition from prizes, 31 *Ed.* 3. *Rot. Parliament, numb.* 24. But our Engliſh Merchants refuſed the benefit of that Charter, and therefore the King it ſeemeth was at liberty to take prizes of them as well as Strangers.

12 Ed. 3. *Rot. Almaniæ pars* 1. *numb.* 3.

31 Ed. 3. *Rot. Parl. numb.* 24.

The King did many times ſhut up all the Ports, and ſtop all Trade, and then granted

granted licences to all particular perſons to tranſport Wool and other commodities, for which licences he took fourty ſhillings, ſometimes fifty ſhillings for a Sack of Wool, and the like rate for other Merchandizes, and this is manifeſt by theſe Records, 13 *Ed.* 3. *Rot.* 2. *in Sccio Angliæ*, 14 Edw. 3. *Rot. Parliament. in Arch. Turris.* 13 Ed. 3. 14 Ed. 3.

Thus did this warlike and politique Prince, King *Edw.* 3. by his Prerogative, without Act of Parliament, lay ſundry Impoſitions and charges upon all ſorts of Merchandizes; and although upon Petition of his Subjects in Parliament, when they granted him other Aids and Subſidies of greater value than theſe his Impoſitions, he did many times remit and releaſe thoſe Impoſitions, yet did he oftentimes renew the ſame, or impoſe the like again, when the Aide or Subſidy granted in recompence was ſpeut, as ſhall be ſhew'd more particularly when I com to anſwer the Objections which have been againſt His Majeſties rightfull prerogative, in laying Impoſitions upon Merchandizes.

CHAP.

CHAP. XVII.

Of the Profits raiſed unto the Crown out of Merchandizes during the reigns of ſeveral Kings who ſucceeded K. Edw. 3. *untill the reign of Queen* Mary.

TRue it is, that during the reign of theſe Princes, we finde no Impoſitions directly ſet upon Merchandizes by their abſolute power or prerogative; but they did not forbear to lay Impoſitions directly, for that they wanted right ſo to doe, or becauſe they doubted of their right in that behalf; for they well knew they had the ſame right, the ſame prerogative, and abſolute power that their Predeceſſors had; but becauſe they found other means to make other profit upon tranſporting of Merchandizes, and that in another manner, and in ſo high meaſure, as the trade of Merchandizes in thoſe daies could hardly bear any greater charge, without danger of overthrowing all Trade and Comerce: And therefore thoſe Princes did

did in their wisdomes forbear to lay any further Impositions by their Prerogatives: For these Kings who reigned after King *Edw.* 3. who conquered *Callis* in *France*, and before Queen *Mary* lost *Callis*, had two principal waies and meanes to raise extraordinary profits upon Merchandizes, but proceeding from one cause, namely, from establishing the Staple at *Callis*; for King *Edw.* 3. some few yeares before his death, did by his Prerogative in point of Government, without Act of Parliament, erect a Staple at his Town of *Callis*, and did ordain, and command, that all the Merchandizes exported out of *England*, *Wales*, and *Ireland*, by any Merchant Denison, or Alien, should presently be carried to the Staple at *Callis*, and to no other place beyond the Seas. This Staple at *Callis* was first setled and fixed there by an Ordinance which the King made by virtue of his Prerogative and absolute power in the government of Trade and Comerce, without Act of Parliament: And if this Ordinance so made had been thought unlawful, and against the liberty of the Subject, it would never have been approved and con-

Staple at *Callis*.

confirmed by the Judgements of ſo many Parliaments in the times of *Rich.* 2. *Hen.* 4. *Hen.* 5. and *Edw.* 4. Neither couldthere have been ſuch heavy penalties layd by thoſe Parliaments upon the tranſgreſſors of thoſe Ordinances: Inſomuch as in the time of King *Henry* the ſixth, it was made Felony to Tranſport any Merchandizes to any part beyond the Seas but to *Callis* onely. Now the Staple of *Callis* being thus eſtabliſhed, there did ariſe a double profit to the Crown for tranſportieg of Merchandizes over and above the ancient Cuſtomes and other Subſidies granted by Parliament.

Firſt it came to paſs, that the Cuſtoms and Subſidies for Merchandizes tranſported out of *England*, *Wales*, and *Ireland*, which before was ſingle, and payd but once, that is, upon the outgate; after the eſtabliſhing of the Staple at *Callis*, the duties for the ſame Merchandizes became double at the leaſt, and for the moſt part treble, and were ever payd twice, and for the moſt part thrice; namely, once upon the outgate in the Ports of *England*, *Wales*, and *Ireland*; ſecondly, upon the ingate at *Callis*; and becauſe

becauſe all the commodities brought into *Callis* could not be vented into the main Land there, but the greateſt part was to be exported again by Sea into higher or lower *Germany*, and other the North-Eaſt Countries, and ſome into *Spain*, and *Italy*, and the Ilands of the *Levant*, there did ariſe a third payment of Cuſtomes and Subſidies for ſo much of their commodities as were exported again out of *Callis*, by meanes whereof the Cuſtomes and Subſidies did amount to threeſcore thouſand, or threeſcore and ten thouſand pounds ſterling, *per annum*, in the latter times of King *Edw.* 3. and during the reign of *Rich.* 2. *Hen.* 4. *Hen.* 5. and the beginning of the reign of *Hen.* 6. as appears by the Records of the Exchequer of *England*, which according to the valuation of Moneys at this day, the ounce of Silver being now raiſed from two ſhillings to five ſhillings, do make two hundred thouſand pound ſterling, *per annum*, which doth equal, or ſurmount all the Cuſtomes, Subſidies, and Impoſitions received at this day, though that plenty of money, and price of all things, and conſequently the expences of the Crown be exceed-

E. 3. R. 2. H. 4. H. 5.

ingly increaſed in theſe times.

And albeit the breach of Amity between the Crown of *England* and the Duke of *Burgundy*, who was the Lord of the Lower *Germany*, in the weak and unfortunate time of King *Hen.* 6. did cauſe a ſtop of Trade between us, and that Country into which the greateſt part of our Staple wares, eſpecially Wooll and Cloth were vented, and uttered, and was likewiſe the cauſe of loſs of all our Territories in *France*, except *Callis*, and all the Merchandizes thereof, whereby the Cuſtomes, and other duties payable for Merchandizes were in the time of that unhappy Prince withdrawn, and diminiſhed to a low proportion; yet afterwards upon the Mariage of *Margaret*, Siſter to King *E.* 4. unto the Lord Duke of *Burgundy*, as that in honour of the Engliſh Wooll, which brought ſo much Gold into his Country, he inſtituted the Order of the Golden Fleece; and thereupon the Cuſtomes, Subſidies, and Impoſitions were raiſed again to ſo high a Revenue, as our Kings could not well, in policy, ſtrain that ſtrength of profit upon Merchandizes any higher.

Secondly,

Secondly, albeit the Staple eſtabliſhed at *Callis* being firſt eſtabliſted by an order made by the Kings Prerogative and abſolute power, was afterwards approved and confirmed by ſundry Acts of Parliament, yet did the King by another Prerogative retain a power to diſpence with that Ordinance, and thoſe Acts of Parliament, and to give licenſe to ſuch, and ſo many Merchants as himſelf thought fit, to export any Merchandizes out of *England*, *Wales*, and *Ireland*, unto any other parts beyond the Seas beſides, *à non obſtante* of the firſt Ordinance, and of the Statutes which did eſtabliſh the Staple at *Callis*. By virtue of this Prerogative and power, the ſeveral Kings who had *Callis* in their poſſeſſions, did grant ſo many Licences to Merchants, as well Aliens as Denizens, to tranſport our Staple commodities immediately into other places without coming to *Callis*, for which Licences, whereof there are an incredible number found in the Records of *England*, the Merchants payd ſo dear for their commodities, eſpecially the *Genoeſes*, and the *Venetians*, and other Merchants of the *Levant*, as by the profits made of thoſe Licences did amount

to double the value of those Customes and Subsidies payable for exportation thereof; and thereof those Princes as they had the less need, so had they no reason at all to charge the Trade of Merchandizes with any other, or greater Impositions.

In these two points before expressed doe consist the principal cause why the Princes of *England* who succeeded King *Edw.*3. who won *Callis*, untill the reign of Queen *Mary*, who lost *Callis*, did not directly use their Prerogative in setting any other Impositions upon Merchandizes above the ancient Customes and Subsidies granted by Parliament: For it is to be observed, that most part of those Princes who reigned after K. *Edw.*3. and before Queen *Mary*, had the Subsidy of Tonnage and Poundage granted unto them by Parliament, which being added to the gain of the Staple of *Callis*, did augment not a little the profit layd upon Merchandizes. And may be a reason likewise why those Kings did forbear to lay any other Impositions by their Prerogative.

We may adde hereunto other reasons. First, *Rich.*2. was a *Minor*, and over-

ruled

ruled by the great Princes of the Blood, who would not ſuffer him to uſe his Prerogative.

Secondly, that during the Wars of *Lancaſter* and *York*, there was no fit time to make uſe of that Prerogative, while both parties did ſtrive to win the favour of the people.

Thirdly, that King *Hen.* 7. had much ado to ſettle himſelf in the quiet poſſeſſion of the Kingdome after thoſe troubles.

Fourthly, that King *H.* 8. had ſuch a maſs of Treaſure left him by his Father, and did ſo inrich himſelf by diſſolution of Abbyes, as he had no need to make uſe of this Prerogative.

Fiftly, that K. *E.* 6. was alſo a *Minor*, and that his chiefeſt Council did more contend to advance their own houſes than the Kings profit.

CHAP. XVIII.

That Queen Mary *did use her Prerogative in laying Impositions upon Merchandizes.*

QUeen *Mary*, in whose time the Town of *Callis* was lost, and consequently the benefit of the Staple at *Callis* was lost, did by her absolute power, as appeareth by the Report of the Lord *Dyer*, 1 *Eliz. Dyer* 165. raise an Imposition upon Clothes, *viz.* six shillings and eight pence upon every Cloth, over and above all Customes and Subsidies. True it is, that the Merchants petition'd to be disburthened of this Imposition, which was referred to the consideration of the Justices, and others; whereupon they had many assemblies and conference, as that Book reporteth: And albeit the Resolution of the Judges in that behalf be not found in that book, it is to be presumed, That they adjudged the Imposition to be just and lawfull, because it was continued and answered during

Dyer 165 12 Eliz.

during all the Reign of Queen *Mary*. This Queen *Mary* likewiſe by her Prerogonely, layd an Impoſition of four Marks upon every Tun of French Wines over and above the Prizage and Buttlerage, which during her life time was payd without contradiction.

CHAP. XIX.

That Queen Elizabeth *alſo uſed her Prerogative in laying Impoſitions upon Merchandizes.*

QUeen *Elizabeth* alſo by virtue of the ſame Prerogative, did not only continue the Impoſitions layd by Queen *Mary* upon Cloths and French Wines, but did raiſe other Impoſitions of ſundry ſorts of Merchandizes by the ſame abſolute power; namely, upon every Tun of ſweet Wines, upon every Tun of Rheniſh Wines, upon every Kental of Allom, which during the time of the prudent Princeſs were payd and received without queſtion. Beſides, the ſame Queen, upon complaint made unto her

12 Eliz. in the twelfth year of her Reign, That the State of *Venice* did impose one Ducket upon every hundred of Currans exported out of their Dominions by the Merchants of *England*, did by her Letters Patents, grant unto the English Merchants who traded into the *Levant*, That they only, and their Assigns, might bring Currans into *England*. The English Merchants having this privilege, did take five shillings and six pence upon every hundred waight of Currans brought into *England* by Strangers, which was duly payd, although it was taken by the Merchants by virtue of their privilege only of *fortiori*; yet it ought to have been payd if it had been payable to the Queen her self, as the Lord Chief Baron *Fleming* did observe in his Argument of *Bates*'s case of Currans in the Court of Exchequer in *England*.

CHAP

CHAP. XX.

That our Soveraign Lord King James *hath by virtue of the ſame Prerogative, without Act of Parliament, layd ſeveral Impoſitions upon Merchandizes.*

HIS Majeſty likewiſe when he came to be King of *England* finding his Crown to be ſeized of this Prerogative, and finding withall the neceſſary charge of the Crown exceedingly to increaſe, did for the ſupportation thereof, not onely continue the Impoſitions layd by Queen *Mary*, and Queen *Elizabeth*, but alſo layd new Impoſitions upon ſundry ſorts of Merchandizes, over and above all Cuſtomes and Subſidies formerly due and payable for the ſame: And theſe are the Impoſitions now; the principal of theſe is twelve pence upon the pound, or a ſecond poundage ſet upon Merchandizes as well exported as imported, by Letters Patents 28. *July*, in the ſixth year of his Majeſties Reign; but how is it ſet and impoſed, ſurely

Letters Patents 28. *July*, 6. *Jac.*

ſurely with ſuch moderation, and limitations, and ſuch receptations full of grace and favour, as no Monarch or State in the world did ever impart to their Subjects the like in the like caſe; for, beſides other gracious clauſes contained in the ſame Letters Patents, All commodities ſerving either for food, or ſuſtenance of the Kings people, or ſeting the poor on work, or for munition or defence of the Realm, or for maintainance of Navigation, or which eſpecially tends to the enriching of a Kingdome, are excepted and diſcharged by this Impoſition.

As for the ſpecial Impoſitions which his Majeſty hath ſet upon certain forrein commodities, as Currans, Logwood, Tobacco, *&c.* As touching the firſt of theſe, the Impoſition hath been adjudged lawful in the Court of Exchequer of *England*: And for the other commodities, they are of ſuch nature, as no man ever made queſtion but that the Impoſitions ſet upon them were lawful. Beſides theſe Impoſitions layd in *England*, his Majeſty by his Prerogative onely, ſince the beginning of his Reign, received the Impoſt of Wines in *Ireland*; and

and hath likewiſe, to make equality of Trade in that Realm, layd an Impoſition of twelve pence on the pound of all other Merchandizes imported and exported out of the Ports of *Dublin*, *Waterford*, *Drogheda*, and *Galway*, the Citizens of which Cities and Townes are exempted and diſcharged of Poundage granted by Act of Parliament there, which Impoſition was never impugned in *Ireland*, but hath ſince the ſetting thereof been levied and payd without contradiction. And that wee ſee how long the Crown of *England* hath been ſeiſed of this Prerogative, in laying Impoſitions upon Merchandizes, and how the ſame hath been put in practice by the moſt prudent Princes ſince the Conqueſt.

CHAP.

CHAP. XXI.

The general reasons whereupon this Prerogative is grounded.

ALthough it be a matter of difficulty, and doth savour withall of curiosity and presumption, to search a reason for every Prerogative that is incident to the Crown; for *Sacrilegii est disputare de Principis facto*, saith the Imperial Law; and *Scrutator Majestatis opprimitur à gloria*, saith the Wise man: Yet the reasons whereupon this Prerogative is grounded are so many, and manifest, as it were not amiss to collect the principal of them, rather for the confirmation, than the satisfaction of such as have moved this question touching the lawfulness of Impositions layd by his Majesty upon Merchandizes.

First, the King is the Fountain of all Justice, and therefore the first reason drawn from the Kings charge in doing Justice,

Juſtice, and procuring Juſtice to be done to Merchants, not onely diſtributive Juſtice, wherein conſiſteth *Præmium* and *Pœna*, but cõmutative Juſtice is alſo derived from the king. Now his Majeſty doth exerciſe commutative Juſtice chiefly in the ordering and government of Trade and Comerce, wherein hee is to doe Juſtice, or to procure Juſtice to be done to his Subjects, who do make contracts real and perſonal within the Land: But to his Merchants that trade and traffique with Forrein Nations, and to Strangers that trade & traffick with us, for the Adminiſtration of cõmutative Juſtice within the Land, the King receiveth ſundry profits, which grew firſt by way of Impoſition. A man cannot recover a Debt in the Kings Court, but firſt he payeth the King a Fine for his firſt Proceſs: Land cannot be conveighed by a Common Recovery but a Fine for the Original muſt be payd to the King. Neither can Land be paſſed from one to another by Fine in the Kings Court, but the Kings Silver muſt be payd, *pro licentia concordandi*. Adde hereunto the profit of the Seals in all the Kings Courts, for all manner of Writs: And yet the King

in

in Charta magna did promiſe, *Nulli negabimus, nulli vendemus Juſtitiam vel rectum*; but the Kings taking of theſe, and the like Duties, is no breach of the great Charter, for that the ſame was impoſed by the King long before the Charter was made and taken, *ut Miniſterii ſui ſtipendia*, as the Schoolman ſpeaketh; and withall to recompence the charge of the Crown in maintaining the Court of Juſtice: See *Bodin lib. 6. de Repub. cap. 2.* where hee ſpeaketh of the like profit made upon the Proceſs in *France*: And ſhews that the antient Romans did the like: And the Emperour *Caligula* took the fortieth penny of that which was demanded in every ſeveral Civil Action. If then ſuch profits be taken for the King in his Courts of Juſtice within the Land, towards the charge which he ſuſtaineth in the maintainance of theſe Courts and the Offices thereof, which duties were at firſt limitted and impoſed by the King himſelf without any Act of Parliament; for who ever heard of an Act of Parliament whereby the ſame were granted? Is there not as good reaſon why the charge of the King in doing Juſtice, and procuring Juſtice to be done unto

Bodin lib. 6. de repub. ca. 2.

Caligula:

unto Merchants, whoſe reſidence and comerce is for the moſt part out of the Land, ſhould be recompenced out of Merchandizes imported, and exported, not according to the will of the Merchant, and pleaſure of the people, but proportionable according to the Kings charge, which being beſt known to himſelf, it is moſt meet that the recompence ſhould be limitted by himſelf?

Touching the charge of the King in doing, and appointing Juſtice to be done to Merchants; Are not all Leagues, Truces, and Treaties of State with Forein Princes, wherein the publique Trade and Comerce of Merchants are ever included, concluded, and made at the Kings charge? Did not the Kings Council of State, and high Court of Chancery give more ſpeedy hearing to the cauſes of Merchants than to the cauſes of other Subjects? Doth not the King maintain a Court of Admiralty for deciding of Marine cauſes, which doe for the moſt part concern Merchants? Doth he not bear the charge of ſeveral Leiger Ambaſſadors in *Italy*, in *Spain*, in *France*, in the *Low-Countries*, in *Turkie*, whoſe

whose principal Negotiation doth consist in procuring Justice to be done to our Merchants? And if our Merchants doe suffer wrong in any Forein Country by reason of any defective neglect in doing Justice there, doth not the King by his Prerogative grant them Letters of Mart, or Repriſal, that they may right themselves, which is a *Species justi Belli*, as the Civilians call it? And if the injury done to the Merchants bee multiplyed and continued with a high hand, Is it not the Kings Office to denounce and prosecute War against such a people as doth refuse to doe Justice unto his Merchants? For this cause the Romans began the first Punick War, saith *Appian*, *Cicero* in his Oration *pro Lege Manlia*, affirmeth, *Populum Romanum sæpe Mercatoribus Injuria suis tractata bella gessisse.* Briefly, the plenty of Money being greater in this Age than ever was there by reason of so many Millions of Gold and Silver brought from the *Indies* into *Europe*, and the price of all Merchandizes being withall greatly enhanced, and the charges and expences of Princes exceedingly encreased, is it meet or just that the King at this day should

Appian.
Cicero.

be

be ſtinted or bound to that old Demimark onely for Native commodities, or the three pence of the pound for the Forein commodities which *Edw.* 1. was content to accept of four hundred years ſince, or a ſingle poundage onely, which in the time of King *Edw.*4. was not ſufficient to maintain the neceſſary charges of keeping the Sea, as the Acts of Parliament, 12 *Edw.* 4. cap. 5. which granteth that Subſidy to the King, reciteth all the Kings charge in ſupporting the Trade of Merchants being unlimited, and infinite: And ſhall the duties payable for Merchandizes be ſtinted and reſtrained to ſuch a proportion only as the Subject ſhall bee pleaſed to grant unto him? Aſſuredly if the King had not a Prerogative of his own abſolute power without Act of Parliament, to increaſe the duties payable for Merchandizes at this day, a Merchants Counting-houſe would be richer than the Kings Exchequer; and the Subject who may live privately, and moderate his expences, and yet raiſe the Fines of his Coppyholds, and Rents of his Demeans without controlement, would be in better caſe than the King, who by reaſon of

12 Ed. 4. cap. 5.

the Majesty of his Estate cannot abridge his charges, and yet should have no power of himself without leave of his Subjects to increase his Revenue.

Again, the King is not only at charge in doing of Justice to his Merchants at home, and in procuring Justice to bee done to them abroad, but he doth withall maintain a Royall Navy of Ships, the best, the fairest, the strongest in the world at this day, to protect all Merchants from spoyl and Piracy on the sea. In the maintainance of this Navy, the King doth expend more Treasure than the whole Revenue of some of his Predecessors did amount to.

And he doth not onely secure Merchants by Sea, but he gives them safe conduct by Land also, as appeareth by the great Charter: So as they may well give our King that title which *Virgil* gives to the King of Bees, *Ille operum custos*: And seeing Merchants are most likely resembled to those Industrious creatures, because they bring the hony to the Kings Hives, to wit, to his Havens and Ports, where they, and their Merchandizes bee protected and reserved, why should they not imitate the Bees in

Virgil.

observing

observing their King, and in making him partaker of the fruit of their labours? Neither is it a new thing, or an invention of this Age, to lay Impoſitions upon Merchants for their Waſtage and Protection at Sea; for *Plinius* tels us, *lib.* 19. *cap.* 4. *Merces prætioſæ ut ex India, Arabia, Ethiopia, tutò in Europam à Mercatoribus conveherentur, neceſſariò claſſem parandam eſſe adverſus Piraticas incurſiones, inde maritimi exercitus habendi cauſa vectigal rubri maris inſtitutum.* *Plin. lib.* 19. *cap.* 4.

A third reaſon drawn from the Intereſt the King hath in the parts of the Kingdom, and the cuſtody thereof, which giveth him power to ſhut and open the ſame at his pleaſure.

Again, all the Ports of the Kingdome are the Kings, not onely the Cinque-Ports, which have a ſpecial Warden appointed by the King, but the reſt of the Ports are alſo his, and many of them bear a mark of the Kings Inheritance in their Additions, as *Linn Regis*, *Waymouth*, *Melcombe Regis*, *Pool Regis*; for the King is *Cuſtos totius Angliæ Regni*; as the four Seas are the Walls of the kingdom, ſo the Havens and Creeks are the Gates, and Poſterns of it. They are *Oſtia*, they

are *Janua Regni*; and we find two Ports in *Italy* called by those names, the one at the mouth of *Tiber*, the other corruptly called *Genoa*, but the true name thereof is *Janua*. And as the Havens are *Janua Regni*, the King himself is *Janus*, and hath power to open and shut them at his pleasure.

Omnia sunt nostra clausa patentque mann. Saith *Janus* in the Poet. And again, *Modo namque Patulchus idem & modo sacrificolusius ore vocor.*

The King of *England* hath ever had this Prerogative incident to his Crown, to shut and open the Ports when it pleased him, as appeareth by many Records, especially by the Parliament Rolls in the time of King *Edw.* 3. wherein are found many Petitions that the Sea might be open, which during that Kings time was often shut by virtue of his Prerogative only, and never fully opened again, but when the King layd an Imposition upon Merchandizes.

Tempore Edw. 3.

And this Prerogative of Custody of the Ports, and of shutting and opening the same, is reserved unto the Crown upon an excellent reason: For Trade and Comerce is not fit to be holden with

all

all persons, neither are all things fit to be imported or exported: For such persons as are enemies to the Crown, & come to discover *Arcana Regni*, such persons as come to corrupt Religion, or the manners of the people, such persons as under colour of Merchandizes come to set up Monopolies, or a dry Exchange to drain or draw away our commodities or money out of the Kingdom, are not fit to enter in at the Gates of the Kingdome. And again, such commodities as the kingdom cannot spare, as Corn in time of dearth, and such as may advantage our Enemies and hurt us in time of Warre, as Horses, Armor, Gunpowder, *&c.* are not fit to be exported out of the Realm: And Poysons, Heretical books, and other things which are apparently hurtfull to the people, are not to be imported; and therefore the Prerogative of opening and shutting the Ports is accompanied with another absolute power, of stoping and imbarring of Trade & Comerce, sometimes generally, sometimes between us and particular Nations, and sometimes for particular Merchandizes only, whereof there are many presidents and examples both in Records and Histories

of our Nation, 2 *Edw.* 1. *Rot. Parliament.* *m.*18. *in Archivis Turris.* 2 *Edw.*3. *Rot. fin.* *m.*17 *ibid.* 10 *Edw.* 3. *Chaunc. m.* 3. *in dorso* *ibid.*17 *Hen.*6. *Sccio Angliæ, Matthew Paris Hist. magna p.*568. 10 *Hen.*7. *Stow.* And this Prerogative of imbarring Trade, doth result out of the undoubted Prerogative which the King hath to make Peace and War with Forein Nations, for open War is no sooner denounced, but all Trade of Merchandize is stopt and imbarred between the Nations which are ingaged in the Warre, *durante bello inter Reges Christianos merces quascunque exportare vetantur ne Regni arcana scrutentur*, saith a Doctor of the Imperiall Law; whereupon wee make this Argument, That since the King hath absolute power of shut the Ports, and stop Trade, it standeth with as good reason that he shold have the like power to lay reasonable Impositions upon Merchandizes for opening of the Ports, and for giving of freedome of Trade again; he that may doe the more, may doe the lesse, *Non debet ei cui id quod majus est, id quod minus est non licere*, saith the Rule of the Law; hee that may prohibit Merchants not to Trade or passe, may dispence with that prohibition, and give them

2 *Edw.*1.
2 *Edw.*3.
10 *Ed.*3.
17 *Hen.*4
Matthew Paris Histor. Magna p. 568.
10 *Hen.*7 *Stow.*

them leave to go and Traffique *ſub modo.*

Again, the King of *England* is *Dominus Maris*, which floweth about the Iſland, as divers ancient Books and Records do teſtifie, as *Fitz Avowry* 192. 6 *Rich.* 2. *protection.* 46. *Rot. Scotiæ. m.* 16. *in Arch. Turris.* And he is Lord of the Sea, not ouly *quoad protectionem & juriſdictionem*, ſed *quoad proprietatem*, and this is our *Neptunes* trident, for God gave unto man as well the Dominion of the Sea as of the Earth, where it is ſaid, *Gen.* 1. *replete terram & ſubjicite eam, & dominamini piſcibus maris, &c.* and in *Pſal.* 8. *Omnia ſubjecit pedibus ejus, Piſces maris & quicquid perambulat ſemitas maris.*

Fitz Avowry 192. 6 *Rich.* 2. *protection* 46 *Rot. Scotiæ. m.* 16 *in Arch Turris.*

Gen. 1.

And therefore *Baldus* affirmeth, *de jure Gentium diſtincta eſſe dominia in mare ſicut in terra arida*, and again, *mare attribuitur terræ Circunſtanti.* Hence it is, though there be but one Ocean, in reſpect whereof the whole Earth is *quaſi inſula*, ſaith *Strabo*, yet is there *Mare Gallicum, Sardicum, Creticum, Ægypticum, & oceanus Britanicus, Germanicus, &c.* which particular names do note a propriety in the Princes and States, who are Lords of the Land adjoyning. Hence it is that our Common

Baldus.

Strabo.

Law doth give unto our King all the land which is gained from the Sea, which
stampford *Stampford* in the Book of the Kings Prerogative doth affirm to belong to the King, *de jure Gentium, quia Mare seu particula Maris est de Territorio illius Civitatis vel Regni cui magis appropinquat*, saith one learned Doctor, *Mare se extendit cum aquæ sint mensurabiles*, saith another; hence it is, that all navigable Rivers, as the River of *Thames*, and the River of *Lee*, and divers others, are called in our Books, the Kings Streams, 19. *Ass.* p. 6. *Dyer* 117. *a.* be-
19. Ass. p. 6. cause such Rivers are arms of the Sea, so
22. Ass. p. 93. far as the Sea doth flow in them, 22. *Ass.* *p.* 93. and lastly, hence it is, that by the Common Law, the King may prohibit all Subjects whatsoever to passe over the Seas without his licence; and to that end
22 Ed. 4. in 22 *Edw.* 4. the King commanded the Warden of the Cinque Ports, and the Bailifs of all other Ports of the Kingdom, that they should not suffer any Man, Ship, or Boat, to passe beyond the Seas, *quousque Rex illud mandaverit*, and the like Commandments were given, 4 *Edw.* 3.
4 Edw. 3. 21 Ed. 3. 16 Ri. 2. 17 H. 6. 21 *Edw.* 3. 16 *Rich.* 2. 17 *Hen.* 6. If therefore the King hath such an absolute Interest in the Ports, and in the Sea, and in

all

all Navigable Rivers wherein the Kings Ports are ſituated for the main part, why ſhould he not have the like abſolute power to limit and preſcribe unto Merchants what duties they ſhall pay, and upon what terms and conditions they ſhall paſſe to and fro upon the Seas, and come in and out of his Streams and Ports with their Ships and Merchandizes? *Podagium in Mari debet ſolvi ſicut in terra ſi ſit impoſitum per dominum Maris*, ſaith *Baldus*, and the rights belonging to the Lord of the Sea, ſaith another Doctor, are *Jus navigandi, jus piſcandi, jus imponendi vectigalia pro utroque.*

Again, the Kings of *England* have the like Prerogative in the government of Trade and Comerce belonging to this Kingdome, as other Princes and States have within their Dominions; he muſt of neceſſity have the like abſolute power as they all have to lay Impoſitions upon Merchandizes imported and exported, otherwiſe he cannot poſſible hold the ballance of Trade upright, or perſerve an equality of Traffique between his own Subjects and the Subjects of Forein Princes, and conſequently it will lye in the power of our Neighbours to drain

and

and draw away all our wealth in a short time, or else to overthrow all Trade and Comerce between us and them at their pleasure, and we shall have no means to encounter or avoid the mischief; for their Princes, having sole power to impose, will have the sole making and managing of the Market between their Subjects and us, and consequently may set what price they please upon all Merchandizes, enforcing us to sell our Commodities cheap, and buy their Commodities dear, onely by this advantage of laying Impositions.

And therefore the King of *England* must of necessity have the same absolute power to lay Impositions upon Merchãdizes, as other Princes have, as well, *ut evitetur absurdum*, as to prevent the ruin of the Common-wealth, by the equall ballancing of Trade & Comerce between his Subjects and the Subjects of Forein Princes. Upon this reason when the Duke of *Venice*, in the time of Q. *Eliz.* as is before expressed, had laid an Imposition of one Ducket upon a 100 *li.* weight of Currans carried out of his Dominions by any English Merchant, the Queen by speciall Patent in the twelfth year of her

Reign

Reign, did enable the Merchants which did Trade into the *Levant*, to levie five ſhillings and ſix pence upon every 100 *li.* weight of Currans brought into *England* by any Merchant Stranger. Upon the like reaſon, when in the time of King *Hen.* 8. the Emperor and the *French* King had raiſed the valuation of their monies both ſo high, as there grew not only an inequality of Trade between their Subjects, and the Subjects of *England*, but our monies ſtanding at their former values, were carried out of the Realm in great quantities; The King in the 24 year of his Reign granted a Commiſſion unto Cadinall *Woolſey* to enhance the values of *Engliſh* monies likewiſe, by that means to ſet ballance of trade even again, and to keep our monies within the Realm. *Tempore. Henry* 8.

Upon the ſame reaſon of State, when the King of *Spain* that now is, in the year 1614. had laid an Impoſition of thirty upon the hundred on all Merchandizes imported and exported by Strangers; the *French* King *Hen.* 4. was quickly ſenſible of it, and did forthwith impoſe the like in his Kingdom; then it followed of neceſſity that other Nations ſhould follow and imitate them, whereby it came to The K. of *Spain's* Impoſition in An. 1614.

to passe that Comerce of Merchants generally throughout *Christendome*, began to decay, which being perceived by these two great Princes, they agreed to take away those excessive Impositions, upon severall Treaties between them and the *Italians*, and after between them and the *English*, and the *Dutch*.

Briefly we find examples in all ages, that whensoever by reason of Warre, or for any other cause, any Forein Prince gave the least impediment to Merchants in their Trade, our Princes gave the like entertainment to their Merchants again; This is declared in *Magna Charta, cap.* 30. where it is plainly expressed what entertainment the Merchants of all Nations should expect in *England*, *Habeant salvum & securum conductum* (saith the Charter) *Præterquam in tempore guerræ & si fuerint de terra contra nos guerrina*, then as our Merchants are used with them, so shall their Merchants be used with us, 46 *Edw.* 3. The Counteſſe of *Flanders* having arrested the goods of the *English* Merchants there, the King in recompence of their losses, granted unto them all the goods of the *Flemings* in *England*, whereof there is a notable Record mentioned before,

Magna Charta cap. 30.

46 *Ed.* 3.

1 *Edw.*

1 *Edw.3.pat.m.19. in Arch. Turris.* There are many other examples of mutuall embarments of Trade between the *Flemings* & us, and also between us and the *French* men during our Wars with *France*, which I omit; I will recite onely one president in the 40 year of Queen *Elizabeth*, at which times the Merchants of the *Haunce* Towns having by siniſter information procured the Emperour to baniſh our *Engliſh* Merchants out of the Empire; the Queen by her ſpeciall Commiſſion, did authorize the Mayor and Sheriffs of *London* to repair to the *Still-yard*, being the Hoſtell of the *Haunces*, to ſeize that Houſe into her Majeſties hands, and there to give warning to the Merchants of the *Haunce* Towns to forbear Traffique with any of her Subjects in *England*, and to depart the Realm upon that very day, which was aſſigned to our Merchants to depart out of the Empire. 1 *Edw.3.* *Anno 40. Elizabeth*

Laſtly, for the ordering and government of Trade among our own Merchants in Forein Countries and at home, our Kings by their Prerogatives have inſtituted divers Societies and Companies of Merchants, as the Company of Merchant-Adventurers, the *Muſcovia* Company,

pany, the *Turkie* Company, the *East India* Company, &c. all which are created, upholden, and ruled, by the Kings Charter only; whereupon I may conclude, that the Kings of *England* having the same power in governing and ballancing Trade, as other Princes have, may justly execute the same power, as well by laying Impositions upon Merchandizes, as by the other means which are before expressed.

CHAP. XXII.

Of the several Objections that are made against the Kings Prerogative in laying Impositions upon Merchandizes, and the several Answers thereunto.

Object. 1. THE first Objection touching the property which all free Subjects have in their goods.

First, it is objected, that under a Royal Monarchy where the Prince doth govern by a positive Law, the Subjects have a property in their Goods, and inheritance in their Lands; *Ad Reges potestas omnium*

omnium pertinet ad singulos proprietas, So as the King hath no such Prerogative, say they, whereby he may take away the Lands or Goods of a Subject without his consent, unless it be in a case of Forfeiture.

And therefore though *Samuel* foretold the people when they desired a King, *Hoc erit jus Regis, tollere agros vestros, & vineas, & oliveta, & dare servis suis*: Yet *Ahab*, though he were a wicked King, did not claim that Pretogative when he coveted *Naboths* Vineyard, neither did he enter into it untill *Naboth* by false witnesses was condemned and stoned to death for blasphemy, and then he took it for a lawfull Escheat; but when the King doth lay an Imposition upon Merchandizes without the consent of the Merchants, and doth cause the Officers of his Customes to take and levie the same; it seems say they, they take away the goods of the Subject without his consent, and without cause of forfeiture, which is not warranted either by Law of Nations, which brought in property, nor by the Law of the Land, which doth maintain property.

CHAP.

CHAP. XXIII.

The Answer to the first Objection.

The Answer to the 1. Object.

TO this Objection we answer, That the King doth not take the Land or Goods of any without his consent; but here we must distinguish, there is a particular and expresse consent, and there is an implicit and general consent, when a man doth give his Goods, or surrender his Lands to the King by deed enrolled, or when in Parliament which representeth the body of the whole Realm, and wherein every man doth give his consent, either by himself, or his Deputy. A subsidy is granted to the King, there is an expresse consent; but when subjects who live under a Royall Monarchy, do submit themselves to the obedience of that Law of that Monarchy, whatsoever the Law doth give to that Monarch, the subjects who take the benefit of the Law in other things, and doe live under the protection of the Law, doe agree to that which the Law gives by an implicit and

and general consent, and therefore there are many cases where the King doth lawfully take the goods of a Subject without his particular & expresse consent, though the same be not forfeited for any crime or contempt of the Owner.

If a Theef do steal my goods and waive them, the King may lawfully take those goods without my particular consent, and without any fault or forfeiture of mine; but in regard I live under the Law, which giveth such wayves unto the King, he taketh not the same without my implicit consent; so if my Horse kill a man, the King may lawfully take my Horse a Deodand without my fault or consent in particular; but in that I have consented to the obedience of the Law which giveth all Deodands to the King, he taketh not my Horse without the implicit or generall consent of mine.

In the time of War the King doth take my House to build a Fort, or doth build a Bulwark upon my Land, he doth me no wrong, though he doth it without my consent, for my implicit consent doth concur with it, for that I being a member of the Common-weal, cannot but consent to all Acts of neceffity tending to

the preservation of the Common-wealth.

So if the King doth grant me a Fair or Market, with a power to take a reasonable Toll; If a man will buy any thing in my Fair or Market, I may take Toll of him, though I give no particular consent to the grant, because the Law whereunto every Subject doth give consent and obedience, doth warrant the taking of Toll in every Market and Fair granted by the King.

So it is in case of Impositions, the Law doth warrant the Kings Prerogative to impose upon Merchandizes, as is before declared, and therefore though the Merchants give not their particular consents to the laying of these Impositions, yet in regard they live under the protection and obedience of the Law, which submits it self to this Prerogative, and allow and approve the same; it cannot be said that the King doth take these Impositions of them without their implicit and generall consent.

CHAP.

CHAP. XXIV.

Of the second Objection touching the uncertainty and unbounded largeneſſe of this Prerogative.

THe second Objection is against the uncertainty and unlimited largeneſſe of this Prerogative, for in other caſes they ſay, where the King taketh the goods of a Subject by his Prerogative, there is a certainty what he may take, as in the caſe of wayvs, he may take onely the goods wayved, and no more. Object. 2.

In caſe of Deodand, he may take only the thing that cauſeth the death of a man, and no more.

In caſe of wreck, he may take only the goods that are wreckt, and no more.

In caſe of Wardſhip of Land holden in Capite, the King may take the profits of the Land, till the Heir ſues his Livery, and no longer.

In caſe where the King hath *Annum Diem & vaſtum*, hee may retain of the Lands of the Felon attainted, which are

holden of other Lords for a year and a day, and no longer.

In all these cases there is a certainty what the King shall have, and how long he shall have it; but in case of Impositi-on, the quantity or rate thereof high or low, is left to the Kings own will or plea-sure; so as if he should be mis-led, as many Princes have been, with evill Counsell, he might with his Prerogative doe hurt the Cōmon-wealth, by laying too heavy burthens upon his Subjects; for though hetherto his Majesty hath imposed upon Merchandizes only twelve pence on the pound over and above the ancient Cu-stome and the Subsidies granted by Par-liament, yet this Prerogative being un-limitted, he may hereafter (say they) set five shillings or ten shillings upon the pound, if it please him, and so undoe the Merchants, or discontinue and over-throw all Trade and Comerce.

CHAP.

CHAP. XXV.

The Answer to the second Objection.

TO this Objection the fitteſt anſwer is, That it is an undutifull Objection, and withall too buſie, too bold, and too preſumptuous; for it is an Objection againſt the wiſdome of the King in point of Government, and againſt the bounty and goodneſſe of the King towards his people: the Text of the Civil Law cited before, doth call it a kind of Sacrilege to diſpute of Princes Judgments or Actions; and for the Law of *England*, ſure I am, that it truſteth the Wiſdome and Judgement of the King alone in matter of greater importance than in laying of Impoſitions, or ſetting of rates upon Merchandizes. The Anſwer to the 2. Object.

Is not the Kings wiſdome only truſted with the abſolute power of making War and Peace with forein Nations, whereby hee may when hee pleaſeth interrupt all Trade of Merchandizing? Is not the King alone truſted with the like power of making and decrying of monies which

is the onely *Medium* of all Traffique and Comerce? Is not he solely and without limitation trusted with the nomination and creation of all Judges and Magistrates, who are to give Judgement in cases concerning the Liberties, Lands, and Lives of all his Subjects? hath not he a sole and unlimited power to pardon all Malefactors, to dispence with all penal Laws, to distribute all Honours, to grant to whom he pleaseth Protections, Denizations, Exemptions, not only from Juries, but from all other Services of the Common-wealth? and yet these Prerogatives if the same be not used with judgement and moderation, may prove prejudicial to the Common-wealth, as well as the laying of Impositions upon Merchandizes. Shall therefore any undutifull Subject make these conclusions? The King may have a continuall Warre with Forein States and Princes, and so continually corrupt all courses of Merchandizes, *Ergo*, he shall lose his Prerogative of making War or Peace, when himself in wisdom shall think fit so to do. The King may decry all monies of Gold and Silver in Bullion, and establish a Standard of Copper or Leather; therefore he shall

coyn

coyn no monies without the consent of the people. The King may if he please, break up all the Prisons, pardon all Offenders, and so give impunity to all Offenders; *Ergo*, he shall pardon no Malefactors by Act of Parliament. These are found absurd, or rather wicked conclusions, *à posse ad esse* is an absurd Argument, but *à posse & nolle nobile est*. The Law presumes the King to be so noble and so wise, that all Acts done by him, or in his Name during his Infancy, are of as good force in Law, as if the Law had bin done in his ripest years. The Law presumes the King to be most just in all his actions, & therfore it hath these rules; the Prerogative of the King can do no wrong, the King can commit no disseisin, the King can make no discontinuance, and the like, *Cor Regis in manu Domini*, saith *Solomon*, and therefore the Law presumeth, that God will ever direct him to that which is just; is it not then too much curiosity to instruct where the Law trusteth, and too much presumption to presume against the presūption of the Law, especially in the time of such a King who is the wisest, and justest, the most religious, and most gracious King that ever *Solomon.*

reigned in *Europe?* Can any man imagine that ſo great a Maſter in the Art of Government, the moſt prudent King of *great Britain* & *Ireland*, the two greateſt Iſlands in this Hemiſphere, and ſeated moſt commodiouſly for Traffique, which all the World knowing that the duties paid unto him for Merchandizes, are the moſt certain, ſettled, and aſſured, and withall the beſt and richeſt part of his Revenues at this day, will lay heavier Impoſitions upon Merchandizes than they are able to bear, and ſo deſtroy all Trade and Comerce? When King *Hen.* 7. his moſt prudent Predeceſſor, did lend money to his Merchants to maintain Traffique, will he for a little extraordinary profit for the time preſent, pluck up at once the Root, and dry up the Fountain of this Revenue for the time to come? it is unprobable, it is uncredible, it is impoſſible; But ſuppoſe that this is credible, that the King ſhould lay ſuch heavy Impoſitions upon Merchandizes, as all Merchants ſhould refuſe to Traffique, who ſhould loſe moſt by that, the King or his people? aſſuredly hee ſhould ſuffer an exceeding great loſſe in his Cuſtomes; but we that are of the Commons ſhould ſave by it, having

Henry 7.

ving all things necessary for the Life of man within the Land, which is.

Terra suis contenta bonis, non indiga mercis. Poeta.

We should spare these vain expences which we now make upon Forein Commodities, namely Cloath of Gold, Cloath of Silver, Silks, Spices, Wines, and many other superfluous & unnecessary things, which doe nourish Pride, and Luxury, Riot and Excesse amongst us, which corrupt our manners, and in the end will be the ruin of the Common-wealth; I may therefore conclude this point, That since the King hath power by his Prerogative to lay Impositions upon Merchandizes, he hath also a power coincident thereunto, to limit and rate the proportion and quantity thereof, according to his own wisdom & reasons of State, from time to time; for either the King must set down the rates, or the people, or the King and people both by Act of Parliament; but if the people will not assent or agree to a reasonable limitation thereof in Parliament, shall the King lose those Royal Duties which all other Kings do take by vertue of their Prerogative? it were most unreasonable, absurd, and unjust.

CHAP.

CHAP. XXVI.

The third Objection, touching the repeal of Charta Mercatoria *by King* Edw. 2. *and the remit all of divers Impositions by King* Edw. 3. *upon sundry Petitions of the Commons in Parliament, and the punishment of divers Persons in Parliament for procuring Impositions to be set up.*

Object. 3. THirdly, it is objected, that this Prerogative of laying Impositions upon Merchandizes, hath never at any time been set a foot and used by any of His Majesties Progenitors, but it hath been contradicted, and upon Petitions of the people, such Impositions have been suspended, remitted, and abolished; first, King *Edw.* 1. say they, in the 31 year of his Reign, did by his Charter called *Mercatoria*, spoken of before, lay the Imposition of three pence in the pound, now called the petty-Custome, with an increase of other duties upon Merchandizes imported by Strangers; howbeit, this Imposition stood not above seven years

years by vertue of that Charter, but it was discontinued and quite taken way; for in 3 *Edw.* 2. the Charter it self was suspended by the Kings Writ, 3 *Edw.* 2. *Claus. m.* 23. *in Arch. Turris*, and 5 *Edw.* 2. it was utterly repealed by a solemn Ordinance of State, *Rot. Ordins.* 5 Edw. 2. *in Arch. Turris.* 3 Edw. 2. 5 Edw. 2.

Secondly, King *Edw.* 3. did at sundry times during his Reign, lay severall Impositions upon Woolls and other Staple commodities, sometimes fourty shillings, sometimes fifty shillings upon a Sack of Wooll, and other the like rates upon Merchandizes, yet could he never fix nor settle the same upon His Subjects; for upon sundry Petitions of the Commons in Parliament, who found themselves grieved therewith, these Impositions were from time to time remitted, 13 *Edw.* 3. *Rot. Parliament.* 14 *Edw.* 3. *Rot. Parliament. numb.* 12. 17 *Ed.* 3. *Rot. Parliament. numb.* 11. 13 Ed. 3. *in Arch.* 14 Ed 3. 12 Ed. 3.

Again, the same King many times did shut up all the Ports, and thereby restrained the exportation of Merchandizes; then would he take great sums of Money to grant licences to transport, which proved

proved as great a charge as Impoſitions, and yet upon ſundry complaints of the people in Parliament, the Sea was ſet open, and liberty of Trade permitted again, *Stat.* 18 *Edw.*3. *cap.*3. 22 *Edw.*3. *Rot.* *Parliament. numb.*8. *in Arch. Turris.* 13 *Edw.* 3. *in Scccio Angliæ. Rot.*12. 13 *Edw.* 3. *Rot. Parliament. numb.*5. *in Arch. Turris.*

18 Ed.3.
22 Ed.3.
13 Ed.3.

Laſtly, in the laſt year of this Kings Reign, divers perſons were accuſed and puniſhed in Parliament, for procuring new Impoſitions to bee ſet upon Merchandizes, namely, the Lord *Latimer*, who albeit he were a Noble man, and a Privy Counſellor to the King, yet was he fined, committed to the Maſhalſee, and put out of the Council, 50 *Edw.*3. *Rot. Parliament. nu.*34 *in Arch. Turris.* *Richard Lions* likewiſe, a Citizen of *London*, and Farmer of the Cuſtomes, an Inſtrument of the L. *Latimers* in raiſing the new Impoſitions, was fined, ranſomed, and impriſoned, and put from the Franchiſe of the Citie. 50 *Edw.*3. *Rot. Parliament. numb.*17. *in Arch. Turris.* And one *John Peachy*, who had gotten a Monoply of Sweet Wines, by Letters Patents, and by colour thereof had extorted three ſhillings and four pence out of every Pipe or Veſſell of Wine

Lord *Latimer.*

Richard Lions.

J. Peachy

Wine vented by others, was alſo fined and impriſoned, and made ſatisfaction to the parties grieved, 50 *Edw.* 3. *Rot. Parli. numb.* 33. and more than this, a Bill was preferred by the Commons in this Parliament, that ſuch as ſhould ſet new Impoſitions, ſhould have Judgement of life and member, 50 *Edw.* 3. *Rot. Parliament. num.* 191. *in Arch. Turris.* Theſe examples ſtrook ſuch a terrour at that time, as from the time of King *Edw.* 3. till the Reign of Queen *Mary*, being a hundred and fifty years and upwards, there was no man found that would adviſe the King of *England* to ſet or levie any Impoſitions upon Merchandizes by Prerogative, and therefore we find no Impoſition laid upō Merchandizes all that ſpace of time; Queen *Mary* indeed began to ſet on foot this Prerogative again, and laid an Impoſition of three ſhillings and eight pence upon every Cloth tranſported out of the Kingdome; but what doth the Lord *Dyer* report, 1 *Eliz. f.* 165? the Merchants of *London* (ſaith he) found themſelves greatly grieved, and made exclamation and ſute to Queen *Elizabeth* to be diſburthened of that Impoſition, becauſe it was not granted by Parliament,

50 Ed. 3. *Rot. Parl. numb.* 33.

50 Ed. 3. *Rot. Parl. num.* 191. *in Arch. Turris.*

Dyer. 1 *Eliz. fol.* 165.

ment, but assessed by Queen *Mary* her absolute power; these frequent Petitions, complaints, and exclamations, these suspensions and remitalls of Impositions, are good arguments (say they) against the right of this Prerogative.

CHAP. XXI.

The Answer to the third Objection.

The Answer to Object. 3.

THis Objection consisteth of several parts, and shall recieve an Answer consisting of divers parts; the first part of this answer, King *Edw.* 1. being a prudent and resolute Prince, did not onely impose the three pence upon the pound upon Merchant Strangers, by his *Charta Mercatoria*, but justified and maintained that Imposition during his life. True it is, that after his death, King *Edw.* 2. it was repealed, as is before objected; but whose Act was this? by whom was this Ordinance made, which did repeal this Charter? not by the King and his Parliament, but by certain rebellious Barons, who took upon them the Government of the Realm,

Realm, and called themſelves Ordainers; Wherefore King *Edw.* 3. in the firſt year of his Reign, did revive that Charter, and commanded by his Writ that the Cuſtomes and Duties therein contained ſhould be collected and levied to his uſe; He maketh mention of theſe Ordinances of 5 *Edw.* 2. and ſaith the ſame were made *per quoſdã Magnates*, and not by the King, as appeareth by the Record, 1 *Edw.* 3. *Rot. fin. memb.* 30. *in Arch. Turris*, which in another place before I have recited, by which Record it likewiſe appeareth, that thoſe Ordinances 5 *Edw.* 2. were before that time repealed and made void, and therefore that which was done in that time of that unfortunate Prince, overruled by his unruly Barons, is not to be urged and uſed as an example, eſpecially ſince they that urge this repeal of *Charta Mercatoria*, might, if they would find any thing which makes againſt their contradicting humour, find in the ſaid Roll of Ordinance, made in 5 *Edw.* 2. divers Articles wherein thoſe Ordainers did wrong and wound the Prerogative in matter of greater importance than in the repeal of that Charter, for they might have found among the ſame Ordinances theſe things ordained. 5 Edw. 2.

Firſt,

First, that the King should not make gifts of Lands, Rents, Franhises, Wards, or Escheats, without the consent of the Ordainers.

Secondly, that all gifts and grants formerly made by the King, not only of Land and other things in *England*, but in *Gasconie*, *Ireland*, and *Scotland*, should be resumed and made void.

Thirdly, that the King should not depart out of the Realm, nor make Warre, without the assent of his Barons, and of his Parliament.

That because the King was misguided and counselled by evill Counsellers, it was ordained, that all his Counsel should be renewed, and new Officers and Servants appointed for him.

These traiterous Ordinances were made against the King at that time, and therefore it is a shame that any part of these Ordinances should be made an argument against the right of the Crown in laying Impositions upon Merchandizes; for with the same reasons they might argue the King had no right to grant his Lands, Rents, Wards, or Escheats, that he might not go out of the Realm, nor make Warre, nor choose his own

own Counſellers or Servants without an Act of Parliament; and it is manifeſt, that thoſe factious Barons did cauſe the King to forego the ſaid Impoſitions, rather *ad faciendum populum*, and to gratifie the Cõmons, and to draw them to their party, than for the good of the Cõmon-wealth; for if they had been good Counſellers they would have done as the Senate of *Rome* did, when *Nero* in a glorious humor to pleaſe the people, would needs have diſcharged at once all Cuſtomes and Impoſitions; the Senate gave him thanks for his favour towards the people, but utterly diſwaded him ſo to doe; telling him, that in ſo doing, he would ruine the ſtate of the Common-wealth; for indeed no Common-wealth can ſtand without theſe duties, they are *Nervi*, they are *ſuccus & ſanguis Reipublicæ*, and therefore no Cõmon-wealth was ever without them, but the imaginary Common-wealths of *Plato* and Sir *Thomas More*, for they doe both agree; for in the Common-wealths of which they dream, there was nothing to be paid for Merchandizes exported and imported. But to return to King *Edw.* 2. what followed upon the Repeal of *Charta Mercatoria*, and the diſcharge of

Senatus Romæ.

Impoſitions which King *Edw.*1. eſtabliſhed? was not that poor Prince King *Edw.* 2. enforced to take up great ſums of money of his Merchants, by way of loan, which he never repaid again? 11 *Edw.*2. *Rot. fin. m.* 12. whereby the Merchants received a greater detriment than if they had made a double payment of Cuſtomes and Impoſitions which the King had diſcharged, and therefore the example of this weak Prince doth make but a weak argument againſt the right of the Crown, in laying Impoſitions upon Merchandizes; and here I think it fit to obſerve that they were all wiſe and worthy Princes which are ſpoken of in former ages, to have laid Impoſitions upon Merchandizes, namely *Solomon* in the Holy Land, *Julius Cæſar* and *Auguſtus Cæſar* in the Empire, King *Ed.*1. and King *Ed.*3. in *England*; but on the other part, they which releaſed all Cuſtomes and Impoſitions, were but weak Princes, and deſtroyed themſelves and the Commonwealth wherein they lived; namely *Nero* in the Empire of *Rome*, King *Edw.*2. and King *Rich.* 2. with us; and truly by the rule of our Common Law, the King cannot, if he would, releaſe all Subſides and Aids

Solomon.
Julius Cæſar.
Auguſtus Cæſar.
Edw. 1.
Edw. 3.

Nero.
*Edw.*2.
*Rich.*2.

Aids of his Subjects, that they ſhould be for ever diſcharged of all Subſidies to be given to the Crown, ſuch a grant were made void, and againſt the Law.

Secondly, touching the Petitions exhibited to the King in ſundry Parliaments, againſt Impoſitions laid by that King upon Merchandizes, upon view of the Record wherein theſe Petitions are contained, with their anſwers made by the King thereunto, it is evident, that neither the Petitions of the people, nor the Kings anſwers thereunto, do diſprove this right of the Crown to lay Impoſitions upon Merchandizes; for Petitions do not of neceſſity prove or ſuppoſe the Petitioners have received wrong; Petitions are of divers kinds. 1. There are Petitions of Grace, which do not inſiſt upon any right, but upon meer Grace and Favour. 2. There are Petitions of Right, wherein the Petitioner doth ſet forth a pretended right, and yet perhaps upon examination it is found that they have no right at all, and commonly they aſk more than their right is, *Iniquum petat ut æquum ferat.* 3. There are Petitions *Armatæ*, when a company of Rebels armed againſt the Crown, do yet preferre

Petitions are of divers kinds, & have divers Anſwers.

their Petitions, but with an intent to effect their desire, whether it be right or wrong, if their Petitions be not granted, *Et strictò supplicat ense petens*, many of their armed Petitions were exhibited during the Barons Wars, during the Wars of *Lancaster* and *York*, and in sundry popular comotions since the Conquest; but these Petitions which we speak of were made by the Commons, or by some factious Spirits, in the name of the Commons, in sundry Parliaments holden during the Reign of King *Edw.* 3. howbeit, if wee look upon the form of these Petitions, we shall find there is nothing sought but Grace and Favour; and if we consider the Kings answers, though many of them be very gracious, we shall find him therein much reserved, and withall circumspect not to prejudice or conclude his Prerogative in point of right; the form of these Petitions was for most part but thus, The Commons pray, that the Imsitions or Maletolt of fourty shillings upon every Sack of Wooll may cease or be taken away, and that the Custome of the demi mark may onely be taken: Or thus, The Cõmons pray, that the passage of the Sea may be open to all manner of Mer-

Merchants and Merchandizes, as it had been in former times; herein we find no claim or challenge of right, but a modeſt prayer of Grace and Favour, unleſſe the word *Mayletolt* may ſeem to imply a wrong, becauſe ſome do conceive that the word doth ſignifie an evil Toll, whereas indeed the word doth ſignifie Toll-money, for *Mayle* in old *French* is a ſmall peece of money, and therefore the rents taken by force in the Borders of *Scotland*, was called *Blackmayle*, and the word *Mayletolt*, in ſome of our old Statutes is taken *in bonam partem*, which ſpeaks of *Droiturell Mayletolts*. But in what form doth *Edw.* 3. make his Anſwers to thoſe Petitions? in divers formes, according to the diverſity of the occaſions & reaſons of State, but alwayes in a gentle and gracious manner, ſometime he granteth the Petition in part onely, for a certain time, or after a certain time expired, that his people may know, that as he receiveth part of the Petition, ſo he might have rejected the whole if he might have been ſo pleaſed; ſometimes he granted the whole Petition, yet not abſolutely but conditionally, that hee may receive a greater recompence; but whereſoever

Mayle 1 11

he doth franckly yeeld to remit any Impoſition, we find in the ſame Record a Subſidy granted unto him of far greater value and profit than the Impoſition by him remitted, wherein we perceive that he followed the wiſe counſell of *Roboams* old Counſellers, given in the like caſe of Impoſitions, 3 *Kings cap.* 12. *ſi hodie obedieris populo huic & petitioni eorum ceſſeris locutuſque, diebus, &c.* ſometimes he gives a generall or doubtfull anſwer, and ſometimes hee is ſilent and gives no anſwer at all; ſo as he doth never bind nor conclude himſelf by any of thoſe anſwers to thoſe Petitions, but with ſuch reſervation as he might ſtill make uſe of his Prerogative in laying Impoſitions upon Merchandizes; to demonſtrate this point more plainly, it were not amiſs out of many Records which I have ſeen, and whereof I have the Copies tranſcribed out of the Records themſelves, with mine own hands, to ſelect and ſet down ſome of thoſe Anſwers in any of the kinds aforeſaid. In 14 *Edw.* 3. *cap.* 21. the Cõmons pray the King that he would grant an Act of Parliament that no more Cuſtome ſhould bee taken for a Sack of Wool but a demi mark, nor for Lead, nor Tin,

3 Kings cap. 12.

14 Ed. 3. cap. 12. c

Tin, nor Leather, nor Wooll-fells, but the old Cuſtomes. This Petition is general and extending to all Staple Comodities without exceptions of perſons, or limitation of times; but what is the Kings anſwer? That from the Feaſt of *Penteceſt*, which commeth, unto a year, neither he nor his Heirs ſhall take of any *Engliſh man* for a Sack of Wooll, more Cuſtome than the half Mark, upon Wooll-fells, and Leather, no more than the old Cuſtome.

Here this Petition is granted but in part; Firſt, in reſpect of the perſons, for *Engliſhmen* only are favoured, and Strangers are omitted; Secondly, onely in reſpect of the Commodities, for Woollfells and Leather onely are exempted, and Tin and Lead remain to be charged as before; Thirdly, in reſpect of the time, for the King continueth his Impoſitions formerly laid for a year and more, notwithſtanding that Petition.

But let us ſee withall what the King did gain in Parliament, upon yeelding to the peoples Petition but in part; in the firſt Seſſions of this Parliament, it was granted that every man who ſhould ſhip Woolls over the Seas, ſhould find Sureties to bring in upon his firſt return, for

every Sack of Wooll, two Marks of Silver, Plate or Bullion, and to deliver it to the Kings Executors; and in the next Seſſions there was granted unto him the nineth Fleece, the nineth Lamb, and the nineth Sheaf of Corn throughout the Realm, which the people did often times redeem with a gift of twenty thouſand Sacks of Wool.

Here we ſee the fruit that the King made by following of *Rehoboams* old Counſellers, & yet out of this grant and remiſſion made by the King, who can draw an Argument againſt the Kings right in laying Impoſitions upon Merchandizes?

Anno 29 Ed. 3. Again, 29 *Edw.* 3. when there lay an Impoſition of fourty ſhillings upon a Sack of Wooll above the old Cuſtome, A Conferrence was had between the Lords and Commons in the White-Chamber at *Weſtmin.* where after a ſhort Parliament, ſaith the Record, 29 *Edw.* 3. *Rot. Parliament. numb.* 11. *in Arch. Turris.* It was concluded, that the King ſhould have a greater Subſidie out of Wooll, Wooll-fells, and Leather, for ſix years; ſo as during that time, the King did lay no other Impoſitions or Charge upon the Commons.

Commons. Here is a conditionall agreement between the King and the poople, and here the King doth remit his power of Impoſition, for a recompence of greater value.

And this is a ſtrong Argument, That the King had right to impoſe, otherwiſe the people would never have bought their freedom from Impoſitions at ſo high a rate or price.

The like conditionall agreement between the King and the people, we find in 6 *Edw.3. Rot. Parliament. numb.* 4. 13 *Ed.* 3. *Rot. Parliament. numb.* 5. 18 *Edw.3. Rot. Parliament. numb.* 10. 26 *in Arch. Turris.*

6 Edw.3: *Rot. Parl. nu.* 4.

13 *Edw.3. Rot. Parl. numb.* 5.

18 Ed 3. *Rot. Parl. nu.* 10. 26 *in Arch. Turris.*

In 28 *Edw.3. Rot. Parliament. numb.* 26. The Commons complain of an exceſſive Impoſition upon Wooll-fells, and deſire that the old Cuſtome might he paid. The Kings Anſwer is, the old Cuſtome ought not to be withdrawn.

28 Ed.3. *Rot. Parl. numb.* 27.

In 38 *Edw.3. Rot. Parliament. numb.* 26. The Commons deſire that an Impoſition of three ſhillings and four pence upon every Sack of Wooll at *Calis*, and all unreaſonable Impoſitions, bee repealed.

38 *Ed.* 3. *Rot. Parl. numb.* 26.

The Kings anſwer unto this is, It pleaſeth the King that all unreaſonable Impoſitions

positions be repealed; like unto this is that answer which is contained in the Parliament Rolls of 6 *Edw. 3. numb. 4. in Rot. Parl. Arch. Turris.* When Petition was made for remittall of Impositions, I shall saith the King, affesse no such Tallages in time to come, but in manner as it hath been in time of mine Ancestors, and ought to be by reason.

6 Edw. 3. numb. 4.

Can any wit of man pick any Arguments out of these Answers against the right of the Crown, in setting Impositi- out upon Merchandizes?

Lastly, in 13 *Edw. 3. Rot. Parliament. numb.* 13. the Commons pray, that the Maletolts of Wooll may be taken as it was used in former times, being then enhaunsed without the Assent of the Commons.

To this Petition there is no answer found of Record, the King is silent, and gives no answer at all; which doubtless the King had not refused to do, if the Petition had been exhibited in point of right, and not in point of favour.

Thirdly, touching the punishing of the persons before mentioned, for procuring of new Impositions to be set upon Merchandizes, we are to consider two circum-

circumstances; first, the time when, and next the causes wherefore these persons were called in question.

The time when these persons were called to account, was a Parliament holden in 50 *Edw.* 3. the last year of that Kings Reign, at which time that great and renowned Prince, who had been formerly assisted by a most wise and politique Councell, was become weak and stupid, and almost in despair, through sickness, age, melancholy, conceipted upon the death of his eldest Son the Black Prince, and suffered himself to be ill-governed by a Woman called *Alice Perrey*, and her Favourite the Lord *Latimer*; upon which occasion and advantage, the Commons grew more bold than they were wont to be in former Parliaments, and therefore if ought had been done in that Parliament, which might prejudice the Kings Prerogative, it is not to be urged as an example or president in these times; but in truth, the causes for which these persons were censured, do rather approve the right of the Crown in laying Impositions, than any way disaffirm the same. First, *Richard Lions*, a Farmer of the Customes, was accused

Lions case 50 Ed. 3. *Rot. Parl.* nu. 17, 18.

cuſed in this Parliament by the Commons, that he had ſet and procured to be ſet upon Wooll, and other Merchandizes, certain new Impoſitions without aſſent of Parliament, converting the ſame to his own uſe without controule, the High Treaſurer not being acquainted therewith, the ſaid *Richard* aſſuming to himſelf in divers things as a King, 50 *Edw. 3. Rot. Parliament. numb.* 17, 18, 19, 20. This was his Accuſation, and though his anſwer were, that he ſet thoſe Impoſitions by the Kings Commandment, yet did he ſhew no Warrant for it, and therefore was juſtly puniſhed with fine, ranſome, diſfranchiſment, and impriſonment.

But how may this inſolency and miſdemeanour of a Subject, be an argument againſt the right or Prerogative of the King? *Lions* a Merchant of his own head cannot ſet Impoſitions upon Merchandizes; *Ergo*, King *Edw.* 3. a Monarch, of his royall Authority cannot do it; what an abſurd argument were this? as if a man ſhould ſay, it were High Treaſon in a Subject to Coyn money; *Ergo*, the King himſelf cannot do it, or cauſe it to bee done; beſides, the accuſation it ſelf doth imply,

imply, that the King hath power to impose upon Merchandizes, because *Lions* is charged, being a Subject, to take upon him as a King in divers things, & namely, in setting of Impositiõs; as if they should have said a King may do it, but not a Subject, according to the rules of the Imperial Law, *Solus Princeps instituit vectigalia Regni tantum juris & muneris est indicere vectigalia, imponere vectigalia maximi Imperii est, inferior a Principe non potest imponere*, and the like.

And the Bill exhibited by the Commons in this Parliament, 50 *Edw.* 3. *Rot. Parliament.* 191. praying that those that should set new Impositions by their own Authority, encroaching unto themselves Royal Power, might have Judgement of life and member, seemeth to be grounded upon good reason, and doth prove it is a Mark of Soveraignty and Royall Power to set Impositions; and therefore if a Subject of his own head, of his own authority wil presume to do it, he is worthy to dye for it; and yet this Bill did receive but a general answer, *viz.* Let the Common Law run as it hath been used heretofore.

Touching the Lord *Latimers* censure, Lord *Latimers* case. he

he had not only upon his own head and authority ſet ſundry Impoſitions upon Merchandizes at *Calis*, where the Staple there was much decayed; but he was charged with ſundry other miſdemeanors mentioned in the ſaid Roll, namely, that he brought in divers Tallies and Tickets, whereby the King was indebted unto his Souldiers and Penſioners, for which he gave little or nothing to the parties, and yet had an entire allowance in the Exchequer, to the great damage of the King, and ſcandall of the Court; that he had alſo deceived the King of the pay and wages which he had ſent unto his Souldiers in *Britain*; that he had ſold a great quantity of the Kings proviſions for his Army there, and converted the ſame to his own uſe; and that he had delivered up the Town of Saint *Saviours* in *Normandy*, and the Town and Fort of *Betherell* in *Britainy*, not without ſuſpition of Corruption and Treaſon.

How can the Lord *Latimers* cenſure for theſe deceits and miſdemeanors make an argument againſt the right of the Crown in laying Impoſitions upon Merchandizes?

And the like may be ſaid of the puniſh-

ment

ment of *John Peachy*, who having got a Patent that none ſhould ſell ſweet Wines within the City of *London* but himſelf, his Deputies, and Aſſignes, by colour thereof did extort three ſhillings and four pence, out of every Pipe or Veſſell of ſweet Wine ſold by others within the City. Shall this extortion committed by a Subject, by colour of a Patent, where perhaps the Patent doth not warrant it, be objected as an argument, that the King himſelf might not lay the like Impoſition upon every Pipe or Veſſel by vertue of his Prerogative? therefore the puniſhment of theſe preſons was not the cauſe, that for an 150. yeares after that, no Impoſitions were layd upon Merchandizes by Prerogative; but the Princes who ſucceeded *Edw.* 3. untill Queen *Mary*, did forbear to uſe their Prerogative in that kind, for thoſe other notable and true cauſes which are before at large expreſſed in the ſeventeenth Chapter. *Peachies Caſe.*

Laſtly, touching the Impoſition of ſix ſhillings and eight pence upon every Cloth, laid by Queen *Mary*, after the loſſe of *Callis*; ſhe held the ſame with a new Impoſition upon *French* Wines, without any queſtion during her life; and albeit complaint

complaint were made against the Impoſition ſet upon Cloaths unto Queen *Elizabeth*, upon her firſt entry (as it is uſuall for the people to complain of burthens and charges upon every change of Government.) Yet we find that after the Conference of the Judges ſpoken of by my Lord *Dyer*, 1 *Eliz. f.* 165. *Dyer.* (though their reſolution be not their reported) Queen *Elizabeth* did continue that Impoſition, and alſo the Impoſt upon *French* Wines, as being lawfull ſet for the ſpace of fourty four years without any further contradiction; beſides, Queen *Elizabeth* did raiſe divers other new Impoſitions, as is before declared, whereunto there was never made any oppoſition during her Reign, and which His Majeſty that now is, hath received without any queſtion for the ſpace of fifteen years; and thus much may ſuffice for anſwer to the ſeveral points in the third Objection.

1 *Eliz.* *Dyer.* *fol.* 165.

CHAP.

CHAP. XXVIII.

The fourth Objection, that the Prerogative is bound or taken away by divers Acts of Parliament.

FOurthly, It is objected, That though it were granted and admitted, that the King *de jure communi*, hath a rightful Prerogative to lay Impoſitions upon Merchandizes, yet that power ſay they, is reſtrained and taken away by ſundry Acts of Parliament. Object. 4.

Firſt, the Statute of *Magna Charta*, *cap.* 30. doth give ſafe conduct and free paſſage to all Merchants to buy and ſell, *abſque aliquibus malis tolnetis per antiquas & rectas conſuetudines.* Secondly, by the Act or Charrer of confirmation in 25 *Edw.* 3. The King doth releaſe a Mayltolt of fourty ſhillings upon a Sack of Wooll, and doth grant for him and His Heirs, unto the Commons, that he ſhall not take ſuch things without the Commons conſent or good will; and in the ſame Act or Charter reciting, that wheras divers people of the Realm were in fear, that the Aids and Taxes which they had

given to the King before that time, was towards his War, and other busineſſes of their own grant and good will, might turn to a bondage of them and their heirs, becauſe in time to come they might be found in the Rolls, and were likewiſe grieved for Prizes taken throught the Realm. The King doth grant for him and his Heirs, That he will not draw ſuch Ayds, Taxes, or Prizes, into a Cuſtome, for any thing that had been done before that time, be it by Roll or any other preſident that may bee found. Thirdly, by the Statute 14 *Edw.* 3. *cap.* 12. the King doth grant that all Merchants Denizens, and Aliens, may freely come into the Realm with their goods and Merchandizes, and freely tary there, and ſafely return, paying their Cuſtomes, Subſidies, and profits thereof, reaſonably due. Fourthly, by the Statute 11 *Rich.* 2. *cap.* 9. it is enacted, That no Impoſition or Charge be put upō Wools, Wooll-fells, or Leather, other than the Cuſtome or Subſidie granted to the King, in that Parliament, if any be, the ſame to be adnulled and repealed, ſaving to the King his ancient right; there are other Acts of Parliament containing the ſame

ſence

fence and substance, but these principally have been singled out, and cited as specially Statutes restraining and taking away the Kings Prerogative in laying Impositions upon Merchandizes.

CHAP. XXIX.

The Answer to the fourth Objection.

The Answer to the forth Object.

TO this Objection first I answer, That this being a Prerogative in point of Government, as well as in point of profit, it cānot be restrained or bound by Act of Parliament, it cannot be limited by any certain or fixt Rule of Law, no more than the course of a Pilot upon the Sea, who must turn the Helme, or bear higher or lower sail according to the wind and weather; and therefore it may be properly said, That the Kings Prerogative in this point is as strong as *Samson*, it cannot be bound; for though an Act of Parliament be made to restrain it, and the King doth give his consent unto it, as *Samson* was bound with his own consent, yet if the *Philistins* come,

that is, if any just or important occasion do arise, it cannot hold or restrain the Prerogative, it will be as thred, and broken as easie as the bonds of *Samson*; and again, *Jus imponendi vectigalia inhæret sceptro*, saith the Law Imperiall, *& quod sceptro inhæret non potest tolli nisi sublato sceptro*. The Kings Prerogatives are the Sunbeams of his Crown, and as inseparable from it as the Sun-beams from the Sun; The Kings Crown must be taken from his head, before his Prerogative can be taken away from him; *Samsons* hair must be cut off, before his courage can be any jot abated. Hence it is, that the Kings Act, nor any Act of Parliament can give away his Prerogative; for in his own Act the King cannot release a *tenure in Capite*, nor grant it to any Subject, *Dyer* 44. If the King grant Land to *J.S.* to hold as freely as the King himselfe holds his Crown, he shall hold his Land still of the King in *Capite*, and if he Alien it hee shall pay a Fine, for the tenure is vested in the King by his Prerogative, saith the Book, 14 *Hen.* 6. 12. and therefore when King *Edw.* 3. did grant unto the Black Prince his eldest Son, the Dutchy of *Cornwall, una cum omnibus wardis maritagiis*

Dyer 44.

&

& releviis, &c. non obstante Prerogativa Regis, the Prince could not seize a Ward that held of the Kings Ward, who held in *Capite* of the King, because it belonged to the King by his Prerogative. 34 *Ass. pl.* 25. whereby it is manifest, that the King by his own Grant cannot sever his Prerogative from the Crown, nor communicate any part thereof to any one, not to the Prince his eldest Son; and in this case of Tenure it was resolved in the last Assembly of Parliament in *England*, That no Act of Parliament could be framed by the wit of man, whereby all Tenures of the Crown might be extinguished; neither can any Act of Parliament in the flat Negative, take away the Kings Prerogative in the affirmative.

The King hath a Prerogative in the affirmation, that he may pardon all Malefactors; There is a Statute made at *Northampton*, 2 *Edw.* 3. That no Charter of pardon for killing a man shold thence-forth be granted, but in one case, where one man killeth another in his own defence by misfortune: Hath this Statute so bound the Prerogative, as no man ever since hath been pardoned for killing a

Statute of *Northampton.* 2 Edw. 3.

man, but in the cases before mentioned? The King hath a Prerogative in point of Government, to make choice of the Sheriff in every County; there is a Statute made, 28 *Edw.3. cap.7.* That no man shall be Sheriff two years together, and that no Commission shall be granted or renew'd for the year following, to him that hath been Sheriff the year before; Was the Kings Prerogative bound by this Statute when hee granted the Sheriffwick of *Northumberland*, to the Earle of *Northumberland* during his life, with *non obstante* of that Statute 2 *Hen.7. fol.6.* Again, the King hath no ancient and absolute power to grant dispensation for holding Ecclesiastical Benefices *in Cõmendum*. There is a Statute made 7 *Edw.3* in *Ireland*, whereby it is enacted and declared, that the Kings dispensation in this case shall be utterly void, if it be not by Act of Parliament; did this Statute so derogate from the Kings Prerogative, and so restrain it, that he might not only by his Letters Patents, Grant *Cõmendamus*, before the Statute of 28 *Hen. 8.* in this Realm? assuredly the Kings dispensation *non obstante* the Statute would have taken away the force thereof, as if

no

no such Law had ever been made. There are many other cases of like nature which I omit; as for the particular Statutes before recited, the words thereof are too generall to bind or restrain this Prerogative in laying Impositions upon Merchandizes. First, that Statute of *Magna Charta* doth give safe conduct to all Merchants to come and go, and to tarry within the Realm, and to buy and sell their Merchandizes, *sine malis tolnetis per antiquas & rectas consuetudines.* How do these generall words restrain the Kings Prerogative in this Case? for the ancient Common Law of the Land, which is the Common Custome of the Realm, doth warrant and approve the Kings Prerogative in laying Impositions upon Merchandizes, as before I have fully and clearly proved, then a reasonable Imposition laid by the King is *Antiqua & recta consuetudo* warranted and approved by the Great Charter.

Secondly, albeit King *Edw.* 1. by Act or Charter of confirmation of *Charta Mercatoria*, made in *Anno* 25. of his Reign, doth release the Maletolt of fourty shillings upon a Sack of Wooll; and doth grant for him and his heirs, that he will

take no such thing without the assent and good will of the Commons. That word (*such*) doth not absolutely bind the Kings Prerog. that he shall lay no Imposition at all, for it is to be intended such in quantity, such in excess, for foury shillings at that time was as much as six pound at this day, which the scarcity of money in those dayes being considered, and compared with the plenty of money at this day, might then be said to be a great burthen, and yet this strong band doth not bind K. *Ed.* 3. his Grand-child but that, notwithstanding this Charter or Act of Parliament, he took these things in greater quantities, sometimes fourty shillings, sometimes fifty shillings, upon a Sack of Wooll, when the *Philistins* came upon him, that is, when the Wars of *France*, and other urgent occasions did presse him to it; as to the other Article contained in the Act or Charter of 25 *Edw.* 3. where it is said the people did fear, lest the Aids and Taxes granted of their good will to the King might turn to a bondage to them and their heires, when the same in time to come should be found in the Rolls; and the King did grant for him and his heirs,

That

That he would not draw such Ayds and Taxes into a Custome; that Act, in this point restraineth not the Kings Prerogative in setting Impositions upon Merchandizes, for it speaketh only of Ayds and Taxes willingly granted by the people in Parliament, & therefore I marvell that this Article was ever objected or used as an argument against Impositions; and whereas the King doth grant that such Ayds shall not be drawn into a Custome, such words are usuall in the preambles of Acts of Subsidies where the grant is large and extraordinary, *viz.* That it may not be drawn into an example, that it may not be a president in future times; and yet succeeding Parliaments have not forborn to grant as large Subsidies as formerly were granted.

Thirdly, the Statute of 14 *Edw.* 3. *cap.* 12. doth rather maintain the Kings Prerogative in this case, than any way impugne or impeach it, for by that Law free passage is granted to all Merchants, paying the Customes, Subsidies, and profits thereof reasonably due. Now certain it is, that all duties payable to the King for Merchandizes, are of three kinds only, Customes, which are these ancient and certain

certain duties, wherein the Crown hath no Inheritance, as is before expreſſed; Subſidies which are granted by Act of Parliament, and Impoſitions which are raiſed from time to time by the Kings Prerogative onely, we find not a fourth kind, and therefore the word *Profits* muſt needs be taken for Impoſitions.

Fourthly, the Statue of 11 *Rich.2. cap.* 9. though it provide in expreſſe terms, that no Impoſition or Charge be layd upon Wooll, Wooll-fells, or Leather, other than the Cuſtome or Subſidy granted in that Parliament, yet it ſaveth alwayes to the King his ancient rights; this was as turbulent a Parliament as ever was holden in *England*, and yet was the Kings Right acknowledged, though the unruly Lords and Commons did in a manner force his Aſſent to limit his Prerogative at that time.

Laſtly, if theſe Acts had abſolutely bound the Kings Prerogative, and had been obſerved literally and punctually untill this time, the King ſhould onely have had at this day the Demi mark for our own Staple Wares, and perhaps the three pence Cuſtome for Forein Commodities, and no more. What an inconvenience,

venience, what an absurdity had this been at this day, when all Forein Princes have raised their Customes to an exceeding height? when as I have noted before the necessary expences of the Crown are so much encreased, when the prizes of all Commodities are so much enhanced, when there is so great a plenty of money in this part of the World, when the Kings Revenue within the Land is so much improved; Is it fit that Duties payable for Merchandizes should stand at a stay and keep the old rates without augmentation?

CHAP.

CHAP. XXX.

The fifth Objection, that Tonnage and Poundage were never taken, but when the same was granted by Parliament.

Object. 5. FIfthly, it is objected, That the Subsidies of Tonnage and Poundage, were never taken by any King of *England*, but when the same were granted by Act of Parliament, which is an Argument, say they, that the King could never take those duties but by his absolute power, for if his Prerogative could have imposed those rates of it self, what need was there of an Act of Parliament? why should the King have expected the consent of the Commons? *cum Dominus eis opus habet*, and when the Exchequor were so empty, as the Jewells of the Crown were layd to pawn by some of those Kings who were glad to take these Subsidies by Acts of Parliament.

CHAP.

CHAP. XXXI.

The Answer to the fifth Objection.

THe Answer to this Objection is twofold; First, That which is objected is not true, for Tonnage and Poundage have been taken by the Kings Prerogative without Act of Parliament; Secondly, If it had been true, it is no Argument against the Kings Prerogative in this point, for what is Tonnage but a certain sum of money payable for every Tun of VVine imported? did not King *Edw.* 3 by force of his *Charter Mercatoria*, without Act of Parliament, take two shillings for every Tun of VVine imported by Strangers? did not the same King set a new Imposition of *Gauge*, *viz.* upon every Tun of VVine brought into *London*, as is before expressed? and are not the severall Impositions of VVines taken by His Majesty in *England* and *Ireland*, a kind of Tonnage? being nothing else but extraordinary rates imposed upon ever Tun of VVine, and levied and

The Answer to the 5. Object.

and taken by the Kings Prerogative.

Again, was not the three pence upon the pound imposed by King *Edw.* 1. by his *Charta Mercatoria*, a kind of Poundage, and well nigh as great an Imposition as twelve of the pound granted at this day by Act of Parliament? if we consider the Standard of Monies in the time of King *Edw.* 1. when a peny sterling did contain as much or more pure Silver, as the three pence sterling doth contain at this day; but admit that no Tonnage or Poundage had ever been taken, but by grant in Parliament; yet it is no Argument, but that the King might impose the like or the same by his Prerogative, for three particular reasons: The first, because these Subsidies were granted for maintainance of the Navy Royall, the charges whereof were grown so great in
Ed. 4. the time of King *Edw.* 4. as appeareth by the Act of Tonnage and Poundage granted in the 12 year of that Kings Reign, that it sufficed not, nor in time to come was like to suffice or defray the charge of the Crown in keeping the Sea: these are the words of that Act, if then in the time of King *Edw.* 4. the Subsidy of Tonnage being three shillings upon a Tun of

VVine

VVine brought in by Denizens, and ſix ſhillings upon a tun brought in by Strangers; and the Subſidy of Poundage or of twelve pence of the pound upon other Cõmodities was not then ſufficient to bear the charge of the Royall Navy, which was not comparable by many degrees in ſtrength, and beauty, and multitude of Ships to the Kings Navie at this day; Doth it ſtand with reaſon, that the Crown ſhould be ſtinted or limited ever after to take no more than thoſe poor Subſidies granted at that time? that the King ſhould wait for a Parliament, and pray an ayde of the Commons for a competent means to maintain the Walls of the Kingdom, when by the Common Law of the Realm he may grant Letters Patents for Murage, to maintain the Walls of a Corporate Town. If any unexpected neceſſity ſhould ariſe for repairing of the Navy Royall, and making a Navall War, ſhould the King expect a Parliament for a greater Subſidy to bee granted by the Commons before he ſhould rigge and make ready his Ships, perhaps a Kingdom might be loſt in the mean time; as if a Pilot ſitting at the Helm, and ſeeing a ſudden guſt of wind,

would

would over-set the Ship, or perceiving her to be running on a Rock, should forbear to turn the Helm, or cause the Sail to be stricken, untill he had consulted with the Mariners or Passengers, and demanded their consent or counsell in the businesse; the Pilot himself with his Mariners and Passengers might be cast away, before they were agreed what course to take.

Secondly, these Subsidies of Tonnage and Poundage were first granted by Act of Parliament, in the time of the Civill VVars between the two great Houses of *Lancaster* and *York*, when the severall Kings were loath to make use of their Prerogatives, but were glad to please their people, and loath to impose any charge upon them, but by common consent in those troublesome times.

Thirdly, Kings and Princes oftentimes of their own noble nature, and sometimes in policy, do accept that of their Subjects as a gift, which they might exact & take as a duty, and therefore our most potent and politique Kings have ordained and accepted many things in Parliament, which they might have done in their private Chambers by their own

preroga-

prerogative, without any other Ceremony; who ever made doubt of the Kings Prerogative in establishing the Standard of monies, and yet how many Acts of Parliament do we find touching Monies, in the times of King *E.* 1. and King *Edw.* 2? the Kings Prerotative in making & establishing Marshall Law, was never yet in question, yet are there Acts of Parliament touching Musters, departures of Souldiers without their Captains Licences, or the like.

The King only doth give Honours, and places of precedency, yet King *Hen.* 8. made an Act of Parliament, whereby he rancked the great Offices of the Crown in their severall places, as well in Council as in Parliament.

No man ever doubted but the King being the Fountain of Justice, may erect Courts of Justice by his Prerogative, yet we find the Court of Augmentations, and the Court of Wards, erected by Act of Parliament.

Lastly, in the time of *Edw.* 2. we find an Act of Declaration of the principall Prerogatives of the Crown of

England, were most undoubted and clear, yet His Majesty was pleased in his first Parliament to accept of an Act of Recognition.

CHAP. XXXII.

The Conclusion.

BY these reasons and demonstrations which are before expressed, it is evident, that the King of *England* by vertue of an ancient Prerogative inherent to the Crown and Scepter, may justly and lawfully set Impositions upon Merchandizes, and may limit and rate the quantity and proportion thereof by his own wisdom and discretion, without Act of Parliament; and this Prerogative is warranted and approved by the generall Law of Nations, and the Law Merchant, which is a principall branch of the Law of Nations; by the Imperiall Law, the Ecclesiasticall Law, and by the rule of the Common Law of *England*, and by the practice

practice of the most prudent Kings and Queens of *England* since the Conquest; and that this Prerogative is grounded upon many excellent reasons, and that the severall Objections made against this Prerogative, are but shadows and colours of reason, and clearly removed and washed away by the severall Answers thereunto.

CHAP. XXXIII.

A Comparison of the Impositions set and taken in England, *by the Kings Prerogative, with the Exactions and Gabells in Forein States and Kingdoms, whereby it will appear, that the Subjects of the Crown of* England *do not bear so heavy a burthen by many degrees, as the Subjects of other Nations do bear in this kind.*

Albeit, indeed the King of *England* being no Emperor, and having all Imperiall Rights within his own

own Kingdoms, hath and ever had as absolute a Prerogative *Imponere vectigalia*, or to lay Impositions, as the Emperor of *Rome* or *Germany*, or any other King, Prince, or State in the world, now have, or ever had; yet let it be truly said for the honor of the Crown of *England*, That His Majesty that now is, and all his Noble Progenitors, have used and put in practice this Prerogative with more moderation and favor toward the people, than any Forein State or Prince in the world have besides, and that in three respects.

First, the King of *England* doth make use of this Prerogative only, in laying Impositions upon Merchandizes crossing the Seas, upon such onely, and not upon any other goods which are bought and sold within the Land; neither doth he by his absolute power alone, impose any Tax upon Lands or *Capita hominum*, or *Capita animalium*, or upon other things innumerable, whereof there are strange presidents and examples, both Ancient and Modern, in other Countries.

Secondly, the King doth not charge all

all Merchandizes crossing the Seas, with this Imposition now in question, for in the Letters Patent whereby the Imposition of twelve pence in the pound over and above the Subsidie of Poundage, is laid and limited, divers kinds of Commodities are excepted, especially such as serve for food and subsistance of the Kings people, for setting the poor on work, for maintainance of Navigation, and other things of like nature, as before is declared.

Thirdly, the Impositions which are laid by the Kings of *England* upon Merchandizes, are not so high as the Impositions and Exactions set and taken by other Princes and States; for the highest Imposition in *Ireland* is but twelve pence upon the pound, or but a single Poundage, which is but five in the hundred, and is the lowest rate in *Christendame* at this day, and in *England* there is added but twelve pence in the pound more, which is but ten pound upon the hundred pound, and yet divers sorts of Merchandizes, as I said before, are except-

ed and discharged of that Imposition of the second Imposition of twelve pence.

But on the other side let us see the practice of other Princes and States in laying Impositions, and how far they have extended and strained their Prerogative in that point, beyond and above the Impositions in *England*; I will begin with the *Romans*, when they had gained the Monarchy of the World, so as all Kingly power did rest in their Emperor.

Julius Cæsars Impositions.

First, *Julius Cæsar* laid the first Imposition upon Forein Merchandizes, saith *Suetonius*, *peregrinarum mercium portaria primus instituit*, and that Imposition was *Octava rerum pars*, which was more by a fifth part than our highest Imposition in *England*, for it is two shillings and six pence upon the pound. Next, *Augustus Cæsar* about the time of our Saviours Birth, sent out an Edict, whereby he did tax all the world, and this Tax was *Capitatio*, or an Imposition, *super capita hominum*, though the quantity thereof doth not appear; but the poll-money which

our

our Saviour did pay, and wrought a miracle, it seemeth to be an high Imsition, for the peeces of money taken out of the Fishes mouth, which is called *didrachma*, or *stater*, is said to bee worth two shillings and six pence sterling, which being given for himself and *Peter*, *da illis pro me et te*, shews that fifteen pence sterling was given for a Poll, which must needs amount to an infinite thing, if it were collected over all the World, then subject to the *Roman* Emperor.

Tiberius the *Roman* Emperor, who succeeded *Augustus*, took the hundred part of all things bought and sold within the Empire, which perhaps was an Imposition of greater value and profit than the other. *Caligula* the Emperor, layd an Imposition upon all Sutes in Law, and took the fourth part of the value of the value of the thing sued for, and set a pain upon the Plaintiff if he compounded, or were Non-suted without his Licence. He likewise imposed a number of *Sesterii* upon every Marriage contracted or made within the whole Empire.

Tiberius the *Roman* Emperor.

Caligula.

Vespasian *Vespasian* in meaner and more homelier matters, took by way of Imposition, a part of every poor Labourers wages, and part of every Beggers alms; he set likewise an Imposition upon Vrine, and pleased himself with this *Apothegm, Dulcis odor lucri ex re qualibet. Severus* the Emperor did impose upon the dishonest gains of the Stews, and took part of the Prostitutes there, as the Bishop of *Rome* doth at this day; all the Emperors before *Trajan*, took the twentieth part of all Legacies and Lands descended, as things which came unlooked for, and as a cleer gain, and therfore the Heirs and Legatories might easily spare a part to the Emperor; and *Nicephorus*, one of the Emperors of the East, did not onely take *fumaria tributa* Smoke-money out of every Chimney, but he layd an Imposition upon every mans Estate that grew suddenly rich, upon a presumption that hee had found a Treasury which did belong to the Emperor by Prerogative. With a little more search I might find out other Impositions of severall kinds, set by the ancient Emperors

perors upon the heads of Beasts, upon the tiles of Houses, and the like; I might adde hereunto the Impositions set by *Lotrain*, upon every pane of Glasse in Windows; but these may suffice how high they strained, and how far they extended their Prerogatives in this point of Impositions.

Secondly, the *Roman* Empire being over-come by the *Gothes* and *Vandalls*, and other barbarous Nations, and thereby broken into Kingdomes and Free States, there passed divers ages before these Monarchies could be well setled, and before peace bred plenty, any plenty bred civility, and before Trade, Traffique, Comerce, and Intercourse could be established between these States, and Kingdoms, and therefore while these States and Kingdoms were yet but poor, and while there was a generall scarcity of Gold and Silver in these parts of the World, and so for want of money there was but little Trade and Traffique among the people, either at home or broad, Kings and Princes did

did not, neither could they make that use of their Prerogative in laying Impositions, as they had done in those latter times; since all Arts and Sciences have been encreased, all Commodities improved, and the Riches of the East and West *Indies* have been transported into this Hemisphere. But now let us see whether the Kings and Princes of other Countries round about us at this day, make not a far more profitable use of their Prerogatives in laying Impositions upon their people, than the King of *England* doth, albeit his Kingly power be full as large as any of theirs.

The Imposition of *France*.

In *France*, the most richest and ancientest of the Neighbour Kingdoms, the Impositions not only upon Merchandizes crossing the Seas, but also upon Lands, Goods, persons of men, within the Realm are so many in number, and in name so divers, as it is a pain to name and collect them all, and therefore it must needs be a more painfull thing for the people of that Kingdom to bear them all, *La taille, le tallon,*

tallon, les aides, les aquivalentes, les equipollentes, les creues, or augmentations of divers kinds, *le hap benevolence, la Gabelle*, upon Salt, amounting to an exceeding great Revenue; the Impost of Wines upon every Vessell carried into any walled Towns or Suburbs thereof, and payable, although it be transported thence again, before it be sold, *la hault passage* or *de maine forrein*, for Merchandizes exported, *le traict forrein*, for Merchandizes imported, *la solid de Cinquante mil holmes*, imposed upon Cities, & walled Towns, and the Suburbs onely, and after layd upon Town and Country, without distinction, the common positions for provisions, the tenthes paid by all Ecclesiasticall persons: These and other Impositions of the like nature, are layd and levied upon the Subjects of *France*, by the absolute power and Prerogative of the King, and though many of these were imposed at first upon extraordinary occasions, and set but for a time, yet the succeeding Princes have continued them from time to time, and the most part of them made ordinary

and

and perpetuall by King *Lewis* the 11. who was wont to say, *France* was a Meadow, which he could have mowed as often as he pleased.

The Spaniſh Impoſitions.

In *Spain* there is an Impoſition named *Alcavala*, impoſed as well upon the Nobility, as the Commons, which was firſt raiſed by *Alphonſus* the 12. to expell the *Moores*, and for the expurgation of *Algiers*, but afterwards it was made perpetuall, and is now a principall part of the Royall Patrimony, *Gutturis de Gabellis, Queſt.* 174. this Impoſition was at firſt but the twentieth part, but afterwards it was raiſed to the tenth of every mans Eſtate, which doth far ſurmount the higheſt Impoſitions that ever were layd in *England*, by the Kings Prerogative, without Act of Parliament.

Gutturis de gabellis Queſt. 174.

This *Alcavala* is an Impoſition within the Land, but the Impoſitions upon Merchandizes exported and imported, are far higher, eſpecially upon Merchants Strangers, for their common Impoſitions upon Strangers is five parts upon the hundred, and in the year 1604. they impoſed thirty

of

of the hundred, as is before declared; and upon the Ingate of *Indian* Spices into *Portugall*, the King of *Spain* doth lay the greatest rates that ever were set in *Christendome*, although upon the outgate the rates are more moderate.

In *Italy* the Impositions and Gabells set upon every kind of thing by the States and Princes there, are intolerable and innumerable.

Non mihi si Centum Linguæ sint oraque Centum,
Ferrea vox Italorum omnes numerare gabellas,
Cunctá gabellarum percurrere nomina possem.

Especially upon the great Towns and Teritories that are subject to the Great Duke of *Tuskanie*, where there is not any roots, nor any herb, nor the least thing that is necessary for the life of man, that is bought and sold, or brought into any Town, but there is a Gabell or Imposition set upon it; where no Inholder, Baker, Brewer, or Artificer, The D. of *Tuskanies* Impositions.

Artificer, can exercise his Trade, but the Great Duke will share with him in his gain, by laying some Imposition upon him; where no man can travell by Land, or by Water, but at every Bridge, at every Ferry, at every Wharf or Key, at every Gate of a Town, the Garbellor arrests him, and is ready to strip him naked, to search what goods he hath about him, for which he ought to pay the Garbell.

The Impositions by the Pope.

In the Popes Territories the Impositions which His Holinesse doth lay upon his Subjects as a Temporall Prince, are as many, and as heavy, as those that are levied by the Duke of *Tuskanie*, in so much as when *Sixtus Quintus* had set an Imposition upon every thing that served for the use of mans life, *Pasquill* made hast to dry his Shirt in the Sun, fearing the Pope would set some Imposition upon the heat of the Sun, *mi astingo* (saith he) in the 16. *sole secundo*; I omit to speak of the Exactions of the Court of *Rome*, in another kind, which are infinite, and which long lay heavie upon the Western Countries of *Christendome*, untill

Sixtus Quintus.

till of late years ſome Nations did free themſelves thereof, by rejecting the Yoke of the Biſhop of *Rome.*

In the Seigniory of *Venice*, the Gabells upon the Land were more moderate than in the other parts of *Italy*; But that City being the Lady of the *Adriatique Sea*, doth uſe by preſcription a high Prerogative, in laying Impoſitions upon all Merchandizes arriving within the Gulf, *Civitas Venetiorum* (ſaith Baltholus) *poteſt pro maritimis mercibus Gabellas imponere, quia eſt Civitas in Mari ſituata, & Venеti* (ſaith Baldus) *ex conſuetudine ſunt domini maris Adriatici & poſſunt ſtatuere ſuper Gabellis maris*, wherein they obſerve a profitable and politique courſe, for upon the Commodities of other Nations which are of goods in their Common-wealth, they lay the eaſier Impoſitions, ſometimes five, ſometimes ſeven, ſometimes ten, upon the hundred, which doth exceed the higheſt Impoſition in *England*, five in the hundred at the leaſt. The Impoſitions of the Seigniory of *Venice.* Baltholus Baldus

In the Low Countries the Impoſitions which they call Excizes, paid by the The Impoſitions of the Low Countries

the Retaylors of Wines and other Cõmodities, and not by the Merchant, are the highest in *Christendome*; and yet we perceive that people to thrive and grow rich withall; for an improved high rent doth so quicken the industrie of the Farmer, as he thriveth oftentimes better than his Neighbour who is a Free-holder and payeth no rent at all; howbeit, to draw Trade, and to invite all Nations to Comerce with them, & so to make their Country a Staple, Store house, or Magizen of all *Europe*, they do set but easie rates upon Merchandizes imported, but when they once have gotten their cõmodities in to their hands, if any Merchant will export the same again, hee shall pay a greater Custome.

The Impositions of the Grand Seignior of *Turkie*

The Grand Seignior of *Turkie* doth impose sometimes ten in the hundred, sometimes twenty in the hundred upon Merchant Strangers, who Trade into the *Levant*; and I could speak of his other Exactions and Impositions upon his Vassalls, but that I think it not meet to compare that Regions Tyrant, to the Princes and States of *Christendome*.

I may remember at last, the Great Toll which the King of *Denmark* taketh of every Ship that passeth into the *Sound*, taking advantage of a narrow Straight between *Elsmore* and *Copnan* Haven; whereas the King of *England* being the undoubted Lord of the Narrow Seas, between *Dover* and *Callis*, might take the like Toll if it pleased him, and by the same right might participate of the great gain of Fishing which the Busses of *Holland* and *Zeland* do make yearly upon the Coasts of *Great Britain*. The Impositions of *Denmark*.

Thus we see by this comparison, that the King of *England* doth lay but his little Finger upon his Subjects, when other Princes and States do lay their heavy loins upon their people; what is the reason of this difference? from whence commeth it? assuredly not from a different Power or Prerogative, for the King of *England* is as absolute a Monarch, as any Emperor or King in the world, and hath as many Prerogatives incident to his Crown; whence then proceedeth it? to what profitable cause may we ascribe it?

certainly to divers causes profitable, and principally to these causes following. First, our King of *England* hath alwayes gone before, and beyond all other Kings in *Christendome* in many points of Magnificency, and especially in this, That they have alwayes had a more Rich and Royall Demean belonging to the Crown, I mean more large and Royall Patrimony in Lands and Rents, than ever any Christian King had before, or now hath at this day; for it is certain, that the Revenues of other Princes and States do principally consist in such Gabells, Impositions, and Exactions, as are before remembred, and not in *terra firma*, not in such a Reall and Royall Patrimony as hath ever belonged to the Crown of *England*, and therefore other Kings being lesse able to maintain their Estates, or more covetous in their own Nature, have laid heavier Burthens upon their Subjects, than ever the King of *England* hath layd, or will do, or hereafter hath need to do, God be blessed for it; the Kings of *England* have had the Princes Portion

spoken

ſpoken of before in 45 of *Ezekiel*, and therefore they had no need ſo to oppreſſe the people. Ezek. 45.

Again, we may aſcribe this difference to the bounty and noble nature of our Kings, that they would never deſcend to thoſe poor and ſordid Exactions which other Princes & States do take of their Subjects, *Sordidum putandum eſt aurum quod ex lachrimis oritur*, as a good Counſeller told *Veſpaſian.*

Again, we may aſcribe it to the wiſdom and policy of our Kings, who would never follow the Counſell of *Rehoboams* younger Counſellers, *boni paſtoris eſt oves tondere non dilubere*, as *Tiberius* the Emperor was wont to ſay, *Odi hortulanum* (ſaith Alexander) *qui ab radice olera excindit, qui nimis emergit elicit ſanguinem*, ſaith *Solomon*, they well Solomon. conſidered that the money levied by Taxes and Impoſitions, is the blood of the people, which is not to bee let out in any great quantity, but to ſave the life, as it were, of the Common-wealth, when ſhe is ſick, indebted, and in great danger.

Again, it may be ascribed to their Piety and Religion which moved them to follow the counsell of the Divine Rule, *Deut.*17. where the King is warned not to multiply upon him much Gold and Silver, for that indeed there doth seldome come good by great Treasure heapt up by a great Prince, for it doth but nourish Pride and Ambition in him, and stir him up many times to make an unjust Warre upon his Neighbours; or if he leave it unto his Successers, it makes them luxurious and vitious, which draweth with it sometimes the ruin of the kingdome, *sed optimus & certissimus thesaurus Principis est in loculis subditorum*, saith the learned *Buterus*, in his Book against *Machiavill*, let the King, saith he, have a care to maintain Religion, and Justice, and Peace, in his Kingdom, this will soon bring plenty, with a continuall increase, and make a rich and wealthy people; then shall the King never want money to serve his just, and necessary, and honourable occasions; for it is impossible the Soveraign should be poor when the Subjects

*Deut.*17.

Buterus contra Machiavill.

Subjects are rich, and untill occasions do arise, the Coffers of his Subjects will be his best Exchequer; they will be his Treasurers, they will be his Receivers, his Tellers without fees or wages, no bad Accomptant shall deceive him, nor no Bankrupt Officer shall deceive him, they will keep the Treasure of the Kingdom so frugally, as no Importunate Courtier shall be able to withdraw the same from a Prince, but that it shall still remain in store to supply the necessities of the Common wealth.

Lastly, our Kings of *England* in their wisdoms, well understood the natures and dispositions of their people, and knowing them to be a free, generous, and noble Nation, held them not fit to be beaten with *Rehoboams* Rod, esteemed them too good to be whipt with Scorpions, and therefore God be blessed, we have not in *England*, the Gabeller standing at every Towns end; we have not a Publican in every Market, we pay not a Gabell for every Bunch of Reddish, or Branch of Rosemary sold in *Cheap-side*, we have none of

of those Harpies which do swarm in other Countries, we have no complaining in the streets, as is said in the 144. *Psalm*; and therefore I may well conclude with the conclusion of that Psalm, Happy are the people that are in such a case, blessed is the people that have the Lord for their God above in Heaven, and King *James* for their King here upon Earth.

Psa. 144.

FINIS.

These Books following, are printed for *Henry Twyford*, and Partners, and are to be sold at his Shop in *Vine*-Court *Middle Temple*.

The Compleat Attorney, or the Practick part of the Law.

A Learned Treatise of Wards and Liveries, by Sir *James Ley* Knight.

The Life of the Apostle St. *Paul*.

Soliloquies, Meditations, and Prayers, of St. *Bonaventure*.

The discontented Collonel, by Sir *John Suckling*.

The *European* Mercury.

The humble Remonstrance of Sir *John Stawell*.

Hebdomada Magna, or the great Week of Christ's Passion.

Sir *Robert Brooks* Reading on the Statute of *Limitations*.

Kitchens Jurisdictions of Courts Leet, Courts Baron, *&c.*

Rich. Brownlow Esq; Prothonotary to the Court of Common Pleas.

His { Reports, the first and second Part. / Declarations and Pleadings English. / Judiciall Writs.

Plowdens Abridgment.

Abridgment of Lord *Cook's Littleton*.

Abridgement of *Pulton's* Statutes at large, by *Edmund Wingate* Esq;

The

The Books of the drawing up of all manner of Judgments.

The Body of Law, by *Edmund Wingate* Esq;

The Marrow of Law, or the second part of the Faithfull Counsellor.

Office and duty of Executors in 8.

Lay-mans Lawyer, or the second part of the Practick part of the Law.

A Commentary on the Original Writs, by *William Hughes* Esq;

Stevenson's Poems.

The Anabaptists Anatomised, in a Dispute between Mr. *Crag*, and Mr. *Tombes*.

Cæsars Commentaries, with Sir *Clement Edmunds* Observations.

The Compleat Clark, and Scriveners guide, being the exact Forms of all manner of Conveyances and Instruments now in uses, as they were Penned by Learned Counsel, both Ancient and Modern.

The Counesse of *Arundells* Secrets in Physick and Chirurgery, &c.

The History of the Troubles of *Swethland* and *Poland*.